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REDACTED – FOR PUBLIC INSPECTION

January 30, 2019

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25

Dear Ms. Dortch:

On behalf of Alaska Communications, I hereby submit under seal the attached comments in response to the Commission's *Second Further Notice of Proposed Rulemaking* in the above-referenced proceedings. Exhibit B to these comments is a Declaration of Beth R. Barnes, Senior Director, Mass Markets for Alaska Communications Systems, which contains Highly Confidential Information of Alaska Communications. These comments are therefore submitted pursuant to the terms of the Commission's Protective Orders in these proceedings, including the Modified Protective Order,[1] the Second Protective Order,[2] Data Collection Protective Order,[3] the

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1 *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Modified Protective Order, DA 10-2075, 25 FCC Rcd. 15168 (2010).

2 *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Second Protective Order, DA 10-2419, 25 FCC Rcd. 17725 (2010); *see also Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC, to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, DA 12-199, 27 FCC Rcd 1545 (2012) (finding that "[r]evenues, including disaggregated revenue information that is not otherwise publicly available, related to DS1 and DS3 services" is eligible for highly confidential treatment).

3 *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Data Collection Protective Order, DA 14-1424, 29 FCC Rcd. 11657 (2014); *see also Wireline Competition Bureau Now Receiving Acknowledgments of Confidentiality Pursuant to Special Access Data Collection Protective Order*, Public Notice, 30 FCC Rcd. 6421 (2015).

Marlene H. Dortch
Secretary, Federal Communications Commission
January 30, 2019

Business Data Services Data Collection Protective Order,[4] the Tariff Investigation Protective Order,[5] and the Protective Order Extension Order.[6]

As directed in the Second Protective Order, I am filing one copy of the Highly Confidential version of these comments with the Office of the Secretary, and providing two additional copies for the attention of Marvin Sacks, in the Pricing Policy Division of the Wireline Competition Bureau. In addition, I am filing two copies of the redacted version of these comments, one with the Office of the Secretary, and one via the Commission's Electronic Comment Filing System (ECFS).

Please contact me should you have any questions concerning this matter.

Very truly yours,

Digitally signed by Richard R. Cameron
Date: 2019.01.30 20:43:05 -05'00'

Richard R. Cameron
Counsel for Alaska Communications

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4 *Investigation of Certain Price Cap Local Exchange Carrier Business Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Protective Orders, 30 FCC Rcd. 13680, App. A (2015).

5 *Id.* at App. B.

6 *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services Order*, DA 16-722, 31 FCC Rcd. 7104 (2016) (extending the protective orders adopted in the business data services (special access) rulemaking proceeding, WC Docket No. 05-25, to Confidential Information filed in the record in WC Docket No. 16-143).

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In the Matter of	)	
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Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
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COMMENTS OF ALASKA COMMUNICATIONS

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January 30, 2019

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Comments of Alaska Communications
WC Docket Nos. 16-143, 05-25
January 30, 2019

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Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25

COMMENTS OF ALASKA COMMUNICATIONS

Alaska Communications[1] hereby responds to the Commission's Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (the "Second Further Notice") in the above-captioned proceedings.[2] In the Second Further Notice, the Commission proposed to reinstate its decision in the 2017 *Business Data Services Order*[3] to eliminate *ex ante* pricing regulation of all price cap ILEC TDM-based transport (*i.e.*, non-end user channel termination) special access services[4] and forbear from the associated tariffing requirements of Section 203 of the Communications Act of 1934, as amended ("Communications Act"), in the wake of the decision of the United States Court of Appeals for the Eighth Circuit (the "Eighth

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1 In these comments, "Alaska Communications" signifies the four incumbent local exchange carrier ("ILEC") subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC, each subject to price cap regulation under FCC rules.

2 *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, et al.*, WC Docket No. 17-144, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC 18-146 (rel. Oct. 24, 2018), at ¶¶ 147-162.

3 *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, FCC 17-43, 32 FCC Rcd 3459 (2017), *aff'd in part, vacated and remanded in part sub. nom Citizens Telecomms. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018) ("*Citizens*").

4 Second Further Notice at ¶ 147. As used herein, "TDM-based transport services" includes all "TDM transport and other transport (i.e., non-end user channel termination) special access services" within the scope of the Commission's proposal in the Second Further Notice, at ¶ 147, n.369. This includes non-packet-switched inter-office ILEC transmission services as well as the ILEC service known as "IXC channel terminations" (connecting an interexchange carrier network to an ILEC network). *See Business Data Services Order* at ¶ 77. Alaska Communications' comments are directed specifically to the TDM-based transport services offered by price cap ILECs. The company takes no position regarding the services offered by ILECs governed by FCC rate-of-return regulation.

Circuit") to vacate those rules for lack of adequate notice under the Administrative Procedures Act ("APA").[5]

Summary

Alaska Communications strongly supports the Commission's proposal and urges the Commission to reinstate its prior rules. As discussed in more detail below, the Eighth Circuit's decision raised no concerns with the substance of the Commission's 2017 decision. Since that time, competition for the TDM-based transport services within the scope of the Second Further Notice has only grown, specifically including in the price cap service territories of Alaska Communications. In this competitive environment, tariffs have become unnecessary or even harmful to competition and customers alike. The Commission's decision to eliminate *ex ante* pricing for these services in 2017, and to forbear from the tariffing requirements of Section 203 of the Communications Act, did not result in any anticompetitive conduct or unjust, unreasonable, or discriminatory pricing practices after it took effect. The public interest will be served, as it was in 2017, by eliminating unnecessary pricing regulation of TDM-based transport services and maintaining forbearance from the associated tariffing requirements.

Discussion

A. Having Now Provided Ample Notice, the Commission Should Re-Adopt its 2017 Rules Eliminating *Ex Ante* Price Regulation for TDM-Based Transport Services and Other Transport Services

The Commission correctly decided in the 2017 *Business Data Services Order* that there is no longer a need for *ex ante* regulation of the rates, terms, and conditions of price cap ILECs' TDM-based transport services. In 2017, the *Business Data Services Order* found correctly that

[5] *Citizens*, 901 F.3d at 1004-05.

"circuit- and packet-switched business data services that offer similar speed, functionality, and quality of service characteristics fall within the same product markets."[6] Having found circuit-switched TDM-based transport services and packet-switched services effective substitutes, and having correctly decided in the *Business Data Services Order* not to impose *ex ante* price regulation on any packet-switched business data services,[7] the Commission merely was carrying this decision to its logical conclusion, finding, from an economic point of view, no public interest benefit from imposing or maintaining *ex ante* price regulation on one set of business data services – TDM-based transport services – after the Commission has determined *not* to do so in the case of another set of business data services – packet-based substitutes – that fall within the same product market.

The Eighth Circuit's decision reversing and remanding the BDS price deregulation decision as to TDM-based transport services was addressed solely to the sufficiency of notice under the APA: "We grant the petitions of the CLEC Petitioners on the notice issue in part, vacating solely the portions of the final rule affecting TDM transport services and remanding them to the FCC for further proceedings."[8] The court took no issue with the substantive conclusion on which the decision to deregulate special access transport prices was based.

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[6] *Business Data Services Order* at ¶ 26; *see also id.* at ¶ 24 ("Functionally, TDM and packet-based services are broadly interchangeable in the business data services realm as both are used to provide connectivity for data network and point-to-point transmissions and both services can be delivered over the same network infrastructure. Incumbent and competitive LEC providers offer both types of services to similar types of customers and their marketing materials juxtapose these two technologies against each other. Customers of TDM-based services are also switching to packet-based services. And commenters representing suppliers agree, with limited exception, the services, whether circuit-based or packet-based, are substitutes and in the same product market.").

[7] *Business Data Services Order* at ¶ 87.

[8] *Citizens,* 901 F.3d at 1015.

"Because the FCC did not propose completely ending *ex ante* regulation of transport services, it did not allow for informed participation in that portion of the rulemaking [addressing TDM-based transport services], and its notice was insufficient."[9]

On remand, the Commission has provided ample notice for price deregulation of TDM-based transport services in the business data services market. In October 2017, the Commission sought further comment on the question of price deregulation of TDM-based transport services, in accordance with the *Citizens* ruling,[10] and published that Second Further Notice in the Federal Register.[11] Moreover, the Commission's intended policy direction was described with specificity in the remanded portion of the 2017 *Business Data Services Order* as well as reiterated unambiguously in the Second Further Notice. There can be no question that interested parties now have had more than sufficient notice for purposes of the APA. It is time for the Commission to act in accordance with its stated intentions.

The folly of re-instating *ex ante* price regulation on TDM transport and other transport services within the scope of the Second Further Notice is also underscored by the nature of this product market in particular. The Commission observed in the *Business Data Services Order* that substitution between TDM-based and packet-based business data services has been largely one-way in nature, with packet-based business data services steadily supplanting TDM substitutes.[12] Moreover, the Commission acknowledged that, "we want that to occur as the technology transition is moving towards the eventual termination of TDM service offerings

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9 *Id.* at 1005.

10 Second Further Notice, *supra*, note 2.

11 83 Fed. Reg. 61358 (Nov. 29, 2018).

12 *Business Data Services Order* at ¶ 25.

altogether," making this trend consistent with the Commission's larger goal to encourage modern, packet-based networks and services to supplant the legacy public switched telephone network ("PSTN") generally.[13] Continuing to impose *ex ante* price regulation on TDM transport services that are the modern equivalent of buggy whips will, if anything, prolong the technology transition that the Commission is otherwise trying to catalyze.[14] Nor should the Commission delay in acting on its proposed rule change. The *status quo* leaves carriers as well as customers in regulatory and business limbo to the extent that eligible business data services already have been detariffed and repriced in accordance with the *Business Data Services Order.* Alaska Communications supports prompt Commission action on this matter.

B. Markets for TDM Transport and Other Transport Services Within the Scope of the Proposal Are Competitive Throughout the Service Area of Alaska Communications

Alaska Communications can confirm that its Alaska service areas are highly competitive for business data services generally, and TDM-based transport services in particular. To win business data services customers, Alaska Communications frequently competes with a host of other service providers, including GCI Communications Corp. ("GCI"), AT&T, Verizon,

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[13] *Id.* Although Alaska Communications meets the definition of an incumbent local exchange carrier ("ILEC") set forth in Section 2521(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(h)(1), the Regulatory Commission of Alaska ("RCA") determined a decade ago that Alaska Communications is a non-dominant carrier in its Anchorage, Fairbanks, and Juneau service areas, and has granted significant regulatory relief in most of its service territory, including with respect to its pricing of local exchange services.[13] It has done so based on evidence that Alaska Communications is subject to vigorous competition in its service areas from larger and better funded competitors, has seen its market share drop precipitously, and therefore lacks market power.

[14] *Business Data Services Order* at ¶ 25 (observing that, "the technology transition is moving towards the eventual termination of TDM service offerings altogether" and that "[w]e want to encourage that migration, while mitigating disruptions to existing customers, to help unleash the benefits of network innovation for American businesses and consumers").

Matanuska Telecom Association, DRS Technologies, and others.[15] Previously in the record of this proceeding, Alaska Communications has documented its concerns that the data the Commission obtained in response to its 2013 special access data request is incomplete for Alaska in significant respects,[16] most particularly in that it fails to capture responses from all of the competitors in the market, and fails in particular to capture complete data on the services provided by GCI, Alaska's largest provider of business data services with the self-proclaimed "broadest reach of any network in the state."[17]

In September 2016, Alaska Communications submitted confidential data showing that, across its ILEC markets as a whole in 2015, Alaska Communications had around an 18 percent share of the market for business data services within its ILEC service area, while its largest competitor in the state, GCI, had roughly a 62 percent market, with other competitors sharing the remaining 20 percent.[18] The data also demonstrated that market share did not differ substantially whether or not DS-1 and DS-3 TDM transport services were included in the analysis.[19]

Alaska Communications' updated analysis reflecting market results through the end of calendar year 2017 shows that, in the wake of the Commission's release of the *Business Data Services Order*, GCI has incrementally increased its dominance in BDS markets.[20] Specifically,

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[15] *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *Ex Parte* Letter from Karen Brinkmann, Counsel to Alaska Communications to Marlene H. Dortch (filed Sept. 2, 2016) (*Alaska Communications BDS Supplemental Letter*"), Declaration of Bill Bishop at 2.

[16] *See Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Reply Comments of Alaska Communications (filed Aug. 9, 2018) at 2-8 ("*Alaska Communications BDS Reply Comments*") (attached as **Exhibit A** hereto).

[17] *See* GCI, "Network Design," *available at:* https://www.gci.com/business/services/networks/network-design (visited Jan. 11, 2019).

[18] *Alaska Communications BDS Supplemental Letter*, Declaration of Beth R. Barnes (Sept. 2, 2016) at 2.

[19] *Id.* at 4.

[20] *See* Declaration of Beth R. Barnes, January 29, 2019, at 2 (attached as **Exhibit B** hereto).

since 2015, GCI's share of the market for BDS (encompassing both packet-based and TDM-based BDS services), has risen to roughly 65 percent, as it has captured a disproportionate share of the increase in market demand since 2015, while Alaska Communications' market share has held roughly steady at 18 percent.

Viewed at a more granular level, the analysis shows that none of Alaska Communications' four ILECs has even a majority (or even plurality) share of the business data services market in its own service territory, with or without TDM-based transport services. Moreover, GCI's dominance in the Alaskan market has grown since GCI was acquired by a larger company with expanded resources.[21]

In short, all Alaska-specific evidence continues to support the conclusion that *ex ante* regulation of the rates, terms, and conditions of price cap ILECs' TDM-based transport services no longer can be justified.

C. The Commission Should Not Create a Competitive Market Test for *Ex Ante* Price Regulation of TDM-Based Transport Services

The Second Further Notice asks whether the Commission should "consider any alternatives to removing *ex ante* pricing regulation for TDM transport offered by price cap carriers," such as by "adopt[ing] a competitive market test to measure the competitiveness of TDM transport offerings in areas served by price cap carriers."[22] Alaska Communications believes that competition and substitution between TDM-based and packet-based business data services are sufficiently pervasive, robust, and irreversible, particularly in Alaska, that there is no

[21] *Joint Application of General Communication, Inc. and GCI Liberty, Inc. for Consent to Transfer Control*, WC Docket No. 17-114, Memorandum Opinion and Order, DA 17-1096, 32 FCC Rcd 9349 (Wir. Comp. Bur. 2017).

[22] Second Further Notice at ¶ 55.

need to do so. Alaska Communications agrees with the Commission's 2017 finding that, even if competition is not universal, it is "sufficiently widespread [to] broadly protect against the risk of supra-competitive rates being charged by price cap LECs over the short- to medium-term."[23]

In Alaska, in particular, the ILEC has never been the primary owner of the transport facilities necessary to deliver business data services to rural and remote areas. The U.S. military built the first communications networks, which were designed for long-haul communications transport interconnecting military installations.[24] In remote communities passed by those facilities, originally, "both local and long-distance services were provided by the military."[25] Only in the 1970s were these networks privatized,[26] with the resulting RCA Alascom becoming Alaska's regulated monopoly long-distance carrier.[27] Gradually, "entrepreneurs began to build local phone networks to connect people in their communities with each other and the outside world over the military's network, later bought and extended by RCA."[28]

Today, while Alaska Communications is the ILEC for 49 remote Alaskan communities, it must purchase TDM-based transport services from other providers, such as AT&T Alascom,

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[23] *Business Data Services Order* at ¶ 92 (finding that "greater harm—primarily manifested in the discouragement of competitive entry over time—would result" from any attempt to identify and regulate the "relatively small percentage of census blocks (with an even smaller percentage of overall demand)" that lack any immediate prospect of competitive transport options").

[24] *See* Heather E. Hudson, *Connecting Alaskans* (Univ. of Alaska Press 2015), at 20-37. These networks included the Washington-Alaska Military Cable and Telegraph System ("WAMCATS") built in the early 1900s; the Alaska Communication System (unrelated to today's Alaska Communications) built in the 1930s; and White Alice and the Distant Early Warning ("DEW") Line, constructed in the 1950s during the cold war to provide early warning of attacks launched via the great circle route over the North Pole.

[25] *Id.* at 181.

[26] The newly-formed RCA Alascom purchased the Alaska Communication System in 1970, *id.* at 58; leased the White Alice network in 1974, *id.* at 100; and subsequently initiated satellite service to supplement its terrestrial transport network, *id.* at 116.

[27] *Id.* at 104. AT&T purchased Alascom in 1995.

[28] *Id.* at 182.

GCI or another third-party provider, that own the facilities necessary to interconnect those communities with the remainder of the state, nation, and world. To the extent Alaska Communications sells TDM-based business data services in those communities, it is often beholden to an unaffiliated third-party facilities-based long-haul transport provider that enables the service, and that could readily enter the market using its own facilities if Alaska Communications were to charge a supra-competitive retail rate.[29]

In any event, tariffs (or any other forms of *ex ante* price regulation) serve only as a substitute for competitive market discipline in the face of market power wielded by a dominant firm. To the extent that the Commission decides to re-impose *ex ante* price regulation on any TDM transport services or other transport services within the scope of the proposal in the Second Further Notice, it would make no sense to regulate the prices of Alaska Communications, which is the clear *minority* market participant. Rather, such regulation should be imposed on the dominant firm.

D. The Commission Should Similarly Forbear from the Tariff Filing Requirements of Section 203

Alongside the proposal to lift *ex ante* price regulation the Second Further Notice proposes to forebear from the tariff filing requirements of Section 203 of the Communications Act[30] with respect to TDM transport services and other transport services within the scope of its proposal.[31] Alaska Communications supports this proposal.

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[29] An affiliate of Alaska Communications has recently purchased satellite transponder space on Eutelsat 115WB, which provides coverage to the entire state of Alaska, *see* Alaska Communications Internet, LLC, Call Sign E170205. Alaska Communications and its affiliates lack the terrestrial facilities necessary to deliver TDM-based transport services via satellite; thus, all services delivered via this Eutelsat 115WB transponder lease are packet-based.

[30] 47 U.S.C. § 203.

[31] Second Further Notice at ¶ 152.

Under Section 10(a) of the Communications Act, forbearance is required with respect to a telecommunications carrier or telecommunications service when the Commission determines that:

> (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) Forbearance from applying such provision or regulation is consistent with the public interest.[32]

All of these conditions are met here.

1. Enforcement Is Not Necessary to Ensure the Telecommunications Carrier's Charges, Practices, Classifications, or Regulations Are Just and Reasonable and Are Not Unjustly or Unreasonably Discriminatory

As discussed above, competitive market forces are amply sufficient to ensure that prices comport with the common carrier standards set forth in Sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. §§ 201(b) and 202(a). The declining use of TDM transport services generally, coupled with the widespread availability of packet-based alternatives provides a market-based check on pricing of TDM services.

For example, Alaska Communications' rural health care customers have migrated from the TDM telecommunications services originally supported by the rural health care universal service support mechanism's Telecommunications Program[33] to packet-based alternatives,

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[32] 47 U.S.C. § 160(a); *see also* 47 U.S.C. § 160(b) ("In making this determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.").

[33] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776 (1997) ("*Universal Service Order*"), at ¶ 620 (limiting eligibility for

chiefly multi-protocol label switching ("MPLS") connections. None today purchase DS-1 or DS-3 TDM transport, given the superiority of packet-based alternatives in delivering reliable and secure telemedicine services.

2. Enforcement of Section 203 Is Not Necessary for the Protection of Consumers

Consumers do not purchase the TDM transport or other transport services within the scope of the forbearance proposal, so any impact could be, at most, indirect. Moreover, to the extent that purchasers of these services incorporate them into consumer offerings, they are likely to be a minor portion of the cost of the overall service.

As discussed above, in Alaska, the price cap ILEC has only a minority share of the market for business data services, whether or not TDM services are included in the analysis or not, so *ex ante* regulation of its prices for these services would, if anything, harm competition (and, by extension, consumers) by creating a more favorable environment for the company's larger competitor.

3. Forbearance is Consistent with the Public Interest and Will Promote Competition

The fundamental purpose of the Telecommunications Act of 1996 was to establish a "pro-competitive, deregulatory" framework that would stimulate opportunities for competition.[34] The inherent policy choice of that framework, reflected in Section 10(a)(3), is that growth of

support to the equivalent of one T-1 connection), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

[34] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Report and Order, FCC 96-325, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") at ¶ 3; *see also* Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (describing the purpose of the 1996 Act as "[a]n Act [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies").

competition coupled with a "reduction in burdensome and inefficient regulation" will "unleash marketplace forces that will fuel economic growth" and benefit consumers by enabling the provision of better, more innovative services at lower prices.[35] Thus, the Commission should eliminate unnecessary rules and forbear from applying statutory provisions as soon as competitive forces are ready to supplant them.

As discussed herein, that is emphatically the case with respect to TDM transport or other transport services within the scope of the forbearance proposal. Facilities-based competition in Alaska is pervasive and irreversible. By relieving the price cap ILEC of the regulatory burden associated with *ex ante* price regulation and associated tariff filings, the Commission will help ensure that such competition remains robust. In Alaska, the price cap ILEC has only a minority share of the market, and faces facilities-based competition in all types of markets. In such an environment, eliminating asymmetric tariff filing requirements that apply solely to the ILEC will promote competition, which perforce serves the public interest under the terms of Section 10(b), 47 U.S.C. § 160(b).

[35] *Local Competition Order* at ¶ 9.

Conclusion

For the foregoing reasons, the Commission should reinstate its decision in the 2017 *Business Data Services Order* to eliminate *ex ante* pricing regulation of all price cap ILEC TDM transport and other transport (*i.e.*, non-end user channel termination) special access services and forbear from the tariffing requirements of Section 203 of the Communications Act with respect to those services.

Respectfully submitted,

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REDACTED – FOR PUBLIC INSPECTION

Comments of Alaska Communications
WC Docket Nos. 17-144, 16-143, 05-25
January 30, 2019

Exhibit A

Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143,
Reply Comments of Alaska Communications (filed Aug. 9, 2016)

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	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

REPLY COMMENTS OF ALASKA COMMUNICATIONS

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August 9, 2016

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SUMMARY

The record in this proceeding is replete with concerns that the Commission has acted precipitously and over-reached with the Further Notice. The Commission may not regulate entities as common carriers in a market, nor treat a market as "non-competitive," without a record supporting such a finding. There is no record in this proceeding supporting regulation of business data service ("BDS") provided by Alaska's incumbent local exchange carriers ("ILECs") such as Alaska Communications. To the contrary, the record disproves the Commission's blanket assumption that the ILEC and only the ILEC has market power.

In threatening to regulate BDS markets that show no sign of failure, the Commission puts at risk the most promising growth sector for traditional telecommunications companies, without any concrete evidence that the public is being harmed. The Further Notice proposes sweeping new regulation but omits most of the concrete details, creating confusion concerning the potential effects on carriers. This chaotic approach puts further infrastructure investment in peril.

In the Special Access Data Collection ("SADC"), the Commission failed to gather critical market data from a number of BDS providers, including the largest provider in the Alaska market – General Communication, Inc. ("GCI"). The Commission cannot fulfill its stated intention to evaluate BDS on a "technology-neutral" basis with grossly inaccurate data from Alaska's competitors. There simply is insufficient record evidence for the Commission to impose any new BDS regulations on Alaska's price cap ILECs.

In many locations, including in Anchorage, Fairbanks and Juneau as well as in Alaska's non-Bush rural markets, BDS and related services have evolved for the most part outside the regulated sphere, and produced robust innovation and competition, with varied services offered

on competitive terms. In these areas, large cable companies compete with midsize or small ILECs for virtually every customer contract, often augmented by competition from national service providers and niche competitors.

In the isolated markets of the Alaskan Bush, where competition has yet to take hold, the culprit is the lack of adequate middle-mile infrastructure linking the local market to other locations and other networks. Either no terrestrial middle-mile facilities have been constructed, and communities are connected only via limited-capability satellite service, or they are connected (such as in southwest Alaska) to monopoly-controlled facilities that provide inadequate broadband capability at above-market prices. In those isolated locations, the Commission should impose regulation on the entity that controls the middle-mile bottleneck, which also is the largest service provider in the state – GCI – not the ILECs that are at pains to compete with the scale and scope of GCI's resources.

The record compiled in this proceeding bears out these problems. The portrait painted by the information gathered in the SADC is incomplete and thus misleading; it fails to capture the BDS capability of GCI and other competitive operators in Alaska. Commenters who allege that all ILECs possess market power fail to back up their claims with market-specific evidence. Indeed, Verizon's comments contradict those it filed just a few years ago, attesting to the highly competitive nature of the enterprise broadband market. Commenters in this proceeding present a very different picture of the BDS market from that presented in the Further Notice, suggesting the Commission has no foundation to regulate ILEC BDS and at the same time ignore the impact of non-ILEC monopolists with a significant market presence.

The Commission should consider the evolution of the BDS market in Alaska an overall success, with limited need for intervention in the middle-mile market serving the Bush. Alaska

communities for the most part enjoy a variety of choices available on competitive rates, terms and conditions and only one significant barrier to entry: the lack of middle-mile connectivity to remote communities. The Commission should tailor its rules accordingly and regulate only where market conditions truly support such intervention.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

REPLY COMMENTS OF ALASKA COMMUNICATIONS

Alaska Communications[1] hereby replies to the comments filed in response to the Commission's proposal to regulate business data services ("BDS") (the "Further Notice").[2]

I. The Record Offers No Support For Regulating ILEC BDS In Alaska

No commenter has suggested that any market in Alaska lacks competition for BDS, except for the comments of Alaska Communications observing that the lack of middle-mile infrastructure *in the Bush* presents a unique bottleneck that the Commission should address.[3] Beyond that, there is an inadequate record for any new regulation. In particular, there is no evidence that any incumbent local exchange carrier ("ILEC") possesses market power for BDS in Alaska. Significantly, the data collected by the Commission in the Special Access Data

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1 "Alaska Communications" as used herein signifies the following subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC; ACS of Anchorage, LLC; ACS of Fairbanks, LLC; and ACS of the Northland, LLC; ACS Internet, LLC; ACS Long-Distance, LLC; and ACS Cable Systems, LLC (an undersea cable operator).

2 *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016) (the "Further Notice").

3 Comments of Alaska Communications, WC Docket Nos. 16-143, 05-25, RM-10593, at 2-3 (filed June 28, 2016) ("Alaska Communications Comments").

Collection ("SADC") mispresent the BDS market by failing to capture the extensive BDS operations of Alaska's dominant competitor, the cable operator, General Communication, Inc. ("GCI"), as well as a variety of additional market entrants from national provider AT&T to smaller, niche competitors.

A. Alaska Special Access Data Compiled By the Commission Are Insufficient To Form A Basis For Regulation

No record exists for imposing new regulation on BDS offered by Alaska's price cap ILEC. Most BDS offerings never were provided on a common carrier basis (as discussed in greater detail in Section B., below). Even those that have been offered under tariff are highly competitive (in all areas but the Bush, as discussed in Section II., below), and therefore do not provide cause to subject the ILEC to new price regulation. The market information gathered by the Commission in the special access data collection ("SADC") fails to accurately reflect the extent of competition for BDS by the state's dominant telecommunications and broadband provider, GCI. Not only is GCI's BDS business undercounted but other providers in the state do not appear to be represented at all in the data. In short, the data in the record is unreliable and provides no evidence of ILEC control of any bottleneck facility. To the extent the Commission wants to impose regulation on Alaska's price cap ILEC, it must gather a more comprehensive and realistic factual record.[4]

[4] A supporting statement from David C. Blessing, principal of Parrish, Blessing & Associates, Inc. retained by Alaska Communications, is provided as Attachment A to these Reply Comments (the "Blessing Declaration"). Mr. Blessing concurs that the Commission need only compare publicly available information to the data collected in the SADC to conclude that the latter fails to provide any accurate picture of the Alaska BDS market. Blessing Declaration ¶¶5-6.

1. *The SADC Does Not Accurately Capture GCI's BDS Revenue and Circuit Information*

The SADC purported to survey all of the providers and purchasers of TDM-based, packet-based and "best efforts" broadband business services, regardless of technology.[5] However, for Alaska, the Commission does not possess a representative data set nor a sound basis for adopting new regulations. In particular, GCI, the state's self-avowed "largest broadband provider,"[6] has not accurately reported its BDS capability in the special access information collection.[7] GCI asserts that it is "the market leader in the Metro Fiber space" in Alaska,[8] as well as the largest provider of "integrated business services," with 75 percent of Alaska's largest 250 companies among its customers.[9] However, the numbers contained in the Commission's data set from the SADC fail to reflect GCI's dominant status in the business services space.[10] The following are just some of the examples of the basic information the SADC fails to accurately capture, or information in the SADC that is directly contradicted in public sources:

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5 *See* Further Notice ¶29, citing *Data Collection Order*, WC Docket No. 05-25, RM-10593, Order & Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16360 (2012) (hereinafter, "Data Collection Order").

6 *See* http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-irhome (visited June 24, 2016).

7 GCI is "the largest Alaska-based communications provider as measured by revenues." *See* https://www.gci.com/business/services/networks/network-design (visited June 24, 2016). Moreover, GCI's communications network has "the broadest reach of any network in the state." GCI Presentation, Peter Pounds, SVP and CFO, "Deutsche Bank Leveraged Finance Conference" (Sept. 2015), at 12, *available at:* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NTk3NTU0fENoaWxkSUQ9MzA3NjcwfFR5cGU9MQ==&t=1 (visited June 24, 2016) ("GCI Leveraged Finance Presentation"). *See also* Alaska Communications Comments, Attachment, Declaration of David C. Eisenberg at 3 ("Eisenberg Declaration").

8 GCI Leveraged Finance Presentation at 12.

9 GCI, "City and Borough of Juneau Proposal for Wireless Service," Oct. 8, 2014, at 1.

10 General Communication, Inc., Annual Report (Form 10-K) at 36 (Mar. 26, 2014) ("GCI 2013 Form 10-K").

- GCI's representations to investors that it is the market leader in the metro fiber sector, and its claims to have a substantial majority of Alaska's largest enterprise customers and the largest network in the state,[11] are strikingly inconsistent with GCI's SADC submission, in which it claims to serve only a small fraction of the locations that were reported by Alaska Communications.

- GCI's Form 10-K Annual Report to the U.S. Securities and Exchange Commission ("SEC") for 2013 reported roughly $154 million in data revenue from "Business Services," and a further $96 million in "Managed Broadband" data service, for a total of $250 million, which is orders of magnitude higher than the business data service revenues it reported to the FCC in the SADC.[12]

- GCI's Form 10-K Annual Report for 2015 shows some $142 million in data revenue from "Business Services" and a further $127 million in "Managed Broadband" data service, for a total over $269 million, which is roughly triple Alaska Communications' $90 million in BDS revenues for the same period.[13]

- The SADC data fails to reflect GCI's Ethernet-capable head-ends, despite the fact that GCI has been advertising Ethernet services and winning competitive bids for BDS since at least 2013, including in rural and remote communities in Alaska.[14]

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[11] *See, e.g.,* Blessing Declaration ¶10.

[12] General Communication, Inc., Annual Report (Form 10-K) at 36 (Mar. 26, 2014) ("GCI 2013 Form 10-K").

[13] Blessing Declaration ¶10 (citing ACS and GCI respective SEC forms 10-K for 2015).

[14] GCI 2013 Form 10-K at 10 ("[w]e also provide metro-Ethernet fiber optic and dedicated access Internet products primarily for our business services customers"); GCI, "A Proposal for Ilanka Community Health Center in Response to a Request for Telecommunications & Internet Services," July 5, 2013, at 6 ("The network will have an Ethernet demarcation point on the clinic LAN from an on-site GCI router . . . The connection follows a path from the clinic to the GCI Cordova Point-of-Presence, then the GCI fiber network for transit to Anchorage and the ConnectMD core . . . . GCI engineering will work with the clinic's staff to determine priority applications, such as videoconferencing or business critical applications, and provider the proper Quality of Service (QoS) on the network.").

Another GCI competitive bid from 2015 describes GCI's extensive Ethernet network which certainly was not built from scratch after 2013. *See* GCI, "Response to University of Alaska Fairbanks Request for Proposal 16P0001SAS System-Wide Telecommunications Services Request for Best and Final Offer," Technical Offer at 10 (Dec. 8, 2015) ("We are uniquely positioned to leverage facilities that we directly own and operate including over 7,000 miles of fiber optics, 5,000 miles of metallic facilities, satellite networks, microwave towers and fixed wireless to deliver a unified Carrier Ethernet service. The Carrier Ethernet Services Delivery Network (CESDN) extends high performance MEF-compliant Ethernet services from access to core providing UA carrier grade end-to-end SLA performance. Our common

- For DS1, DS3 and other circuit-based BDS, the SADC fails to register the impact of DOCSIS-based competition from cable companies such as GCI because revenues from DOCSIS business Internet access sales is not included in the data.[15]

- While GCI reported to the Commission fewer BDS circuits and lower revenues than those of the ILEC across all end-user and "provider" (wholesale) market segments, in SEC filings GCI reported *three times* the revenue that the ILEC reported from BDS-type services.[16]

- USAC data confirm that non-voice telecommunications support is awarded to GCI in far greater amounts than to Alaska Communications or other carriers, even in areas where Alaska Communications is the ILEC.[17]

- FCC Form 477 data shows that GCI can reach many times more census blocks than ACS with data speeds exceeding 50 Mbps.[18]

David Blessing, an economist retained by Alaska Communications to evaluate Alaska's markets, indicates that one likely reason the SADC data fails to capture the true extent of GCI's BDS operations is that BDS often is a component of larger contracts for "managed data services," and GCI has the lion's share of the latter in Alaska.[19] Thus, SADC's focus on standalone BDS contracts, and failure to capture managed services contracts commonly

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network equipment approach provides a service activation and management platform that enables end-to-end performance monitoring, end-to-end fault management and isolation, improved service provisioning velocity, and advanced operations, administration and maintenance functionalities. Core to the CESDN is the ability to flexibly classify ingress traffic based on multiple parameters and map them to one or more services with guaranteed SLAs. Mapping types include but are not limited to physical port, L2 802.1p Bit, L3 DSCP Class, and MPLS EXP Bit. Service level agreements are enforced end-to-end with advanced traffic management attributes that precisely define network protection, network prioritization and bandwidth requirements, allowing flexible configurations that meet the University of Alaska's performance objectives").

[15] Further Notice n. 718.

[16] Blessing Declaration ¶¶ 10-12.

[17] Blessing Declaration ¶¶ 17-23.

[18] Blessing Declaration ¶ 11.

[19] Blessing Declaration ¶ 13.

employed with custom BDS arrangements, skew the representation of the BDS market. Alaska Communications also believes that SADC data should be compared to information submitted to USAC and the Commission, such as in rural health care and E-rate funding requests and in FCC form 477.

Whatever the cause of its failings, the SADC results do not provide a sufficient basis for the Commission to draw any conclusions about the Alaska BDS market. The information contained in the data set for Alaska is incomplete, at a minimum, and not a reliable justification for any new regulation in Alaska BDS. Moreover, as a matter of administrative procedure, the Commission may not ignore readily available information from public sources that contradicts the SADC data to such an extent as to suggest that the SADC data is a fiction.[20]

As for next steps, the Commission should conduct a more comprehensive investigation into GCI's actual BDS offerings and planned offerings. The Commission should review GCI's public statements to investors as well as its responses to requests for proposals ("RFPs") to verify that GCI is consistently reporting the capability and scope of its network infrastructure.[21] The Commission should analyze all types of business services contracts, including managed data services contracts, "best efforts" contracts, as well as contracts with rural health care providers, E-rate customers, and other enterprise customers. The Commission should research the sources

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[20] *See, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009) (courts may "set aside agency action under the Administrative Procedure Act because of failure to adduce empirical data that can readily be obtained"); *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29, 52 (1983) ("The agency must explain the evidence which is available, and must offer a 'rational connection between the facts found and the choice made.'"), *quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

[21] As discussed below, GCI consistently represents to investors that it is the largest provider of broadband services – and not only residential broadband services but also BDS – in the state. *See, e.g.,* Blessing Declaration ¶ 10.

discussed by Mr. Blessing indicating that any market power that exists in Alaska is in the hands of GCI. To date, the record in this proceeding does not reflect the facts as Alaska Communications knows them, facts that easily can be verified through diverse sources.

2. Some Market Participants Are Entirely Missing From the Data

Another reason the SADC provides an unreliable snapshot of BDS competition in Alaska is that it exempted from the data collection many smaller market participants, such as purchasers of less than $5 million in dedicated services in 2013, and "best efforts" service providers that had fewer than 15,000 customers and fewer than 1,500 business broadband customers as of December 31, 2012.[22]

GCI and Alaska Communications are not the only BDS providers in Alaska. Competition at both the wholesale and retail levels takes a number of other forms, including enterprise customers that self-provide, such as the U.S. Department of Defense as well as private businesses, national service providers with a facilities-based presence in Alaska, such as AT&T and Verizon Wireless, and regional providers of BDS.[23] These providers appear to be entirely unrepresented in the data.

Particularly in the Bush, where GCI operates as an unregulated monopolist with respect to long-haul terrestrial transport services necessary for connections to the Internet and any other location, customers self-provisioning BDS represent an important alternative to traditional service providers.

Alaska is a huge state, geographically, but contains mostly very small communities. Excluding smaller market participants likely resulted in substantial BDS competition going

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[22] Further Notice ¶40, citing Data Collection Order ¶¶20-22. *See also* Blessing Declaration ¶ 13.

[23] *See* Alaska Communications Comments at 2-3.

unreported. Moreover, the information that has been gathered for Alaska is not sufficient to justify any conclusion about the ILEC having market power. In fact, the publicly available data discussed in Mr. Blessing's declaration support the conclusion that the ILEC, in fact, has no market power in the BDS sector.

The record in this proceeding does not support a Commission conclusion that BDS regulation is needed in Alaska. Quite simply, the information contained in the SADC data set for Alaska is incomplete and inaccurate and therefore cannot form the basis for a rational decision to regulate the market for BDS in Alaska. And the evidence provided by Alaska Communications in its comments and these reply comments tells a compelling story that it is not the ILEC that needs regulating. If the Commission takes any action affecting the Alaska market, it should be to gather more comprehensive information on the monopolization of the middle mile market, discussed in Section II below, while refraining from imposing regulation where it is not justified.

B. Most BDS In Alaska Is Not Offered On A Common Carrier Basis

Another question the Commission must consider before imposing common carrier regulation on BDS is whether customers perceive the service as a common carrier offering. In Alaska, they do not. Verizon, which has wireless operations in Alaska, incorrectly states that cable and "everyone else in the industry" categorically offer such services as "common carriage."[24] In fact, many customers in Alaska negotiate non-common carrier service packages that include BDS – and both the ILEC and the cable operator offer such packages, with the cable operator being the largest service provider in the state, as discussed in more detail below. While Verizon is correct in stating that providing a service under negotiated terms does not

[24] Letter from Curtis L. Groves, Verizon, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143 *et al*. (filed Aug. 5, 2016).

"automatically change a common-carriage service into private carriage,"[25] the law makes clear that the FCC may not regulate as common carriage a service that is neither offered that way nor compelled, for regulatory reasons, to be offered on a common carrier basis.

First, BDS is not being held out to the public on standardized terms. The Further Notice targets sophisticated, high-speed business services offered by Alaska Communications, GCI and others, with negotiated service level guarantees tailored to individual customer demands. These are not telecommunications services. Such services by definition are customized in all aspects, and offered on a private, contractual basis, at least in Alaska. As such, they should may not be regulated as telecommunications services without clear regulatory compulsion.[26]

In exercising its authority under the Communications Act to regulated common carriers (telecommunications carriers) and telecommunications services, the Commission has distinguished between "telecommunications offered for a fee directly to the public" (common carriage) and services individually negotiated with each customer (private).[27] The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this critical distinction, noting that the "primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently."[28] The Act's requirement that services be offered "directly to the public" in order to be deemed common carriage has been affirmed by the

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[25] *Id.*

[26] *Accord* Comments of Comcast Corporation, WC Docket Nos. 16-143 *et al*., pp. 15-16 (filed June 28, 2016) (BDS is a non-common carrier service offered to enterprise customers that negotiate individual terms; as such, BDS may not be subject to rate regulation except in the case of market failure) (hereinafter "Comcast Comments").

[27] *See* 47 U.S.C. §153(53).

[28] *National Ass'n of Regulatory Util. Comm'rs v. FCC,* 533 F.2d 601, 608-09 (D.C. Cir. 1976). *See also National Ass'n of Regulatory Util. Comm'rs v. FCC,* 525 F.2d 630 (D.C. Cir.), *cert. denied,* 425 U.S. 992 (1976).

U.S. Supreme Court.[29] Most recently, in upholding the FCC's reclassification of non-enterprise, retail broadband Internet access service as a telecommunications service, the court of appeals relied heavily on the FCC's representation that customers perceive the service as a "utility" or common carriage.[30]

No such customer perception surrounds BDS as defined by the Commission. Customers in Alaska enter into arrangements for BDS exclusively on a negotiated basis. There are no tariffs or standard terms of service, nor could there be because by their very nature such services must be tailored to the individual customer.[31] Service level guarantees, prices, locations, contract term and termination rights, and other key provisions all are individually crafted between each customer and the service provider.[32] Frequently, BDS contracts result from extended RFPs and competitive bidding processes. The diverse service bundles found in the market today reflect the differences among individual customers and their business data transmission requirements, as well as effort by competing carriers to differentiate their offerings. Unlike traditional circuit-based services, BDS are not "one-size-fits-all" products. As a result, customers clearly do not perceive BDS as a "utility" or standardized offering.[33]

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29 *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 977 (2005).

30 *United States Telecomm. Ass'n v. FCC,* Case No. 15-1063 slip op. at 24, 45 (D.C. Cir. June 4, 2016).

31 *See, e.g.,* Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143 *et al*. (filed August 2, 2016) (FCC's proposed regulatory framework "does not reflect how carriers negotiate for broadband data services") ("CenturyLink August 2 Letter").

32 Alaska Communications Comments, Att. A, Declaration of David C. Eisenberg ("Eisenberg Declaration") at 2; Comcast Comments at 15-17.

33 *Accord,* Comcast Comments at 16 ("Comcast does not hold itself out indifferently to the public or any class of customers to provide E-Access services upon request").

The Commission's authority to impose common carrier regulation on BDS is severely circumscribed by the customized, private contractual arrangements that define the service. The premise in the Further Notice that such services "are telecommunications services" and therefore anyone providing them "are common carriers" is entirely without foundation. The Commission has not required such services to be tariffed by ILECs or otherwise brought under the strictures of Title II of the Communications Act before now. It may not change its approach without a valid justification.[34] As discussed above, Alaska Communications faces intense competition and pricing pressure in the provision of these services. There is no regulatory compulsion for common carrier regulation. The facts here do not support any such change.

II. If the Commission Regulates BDS In Alaska, It Should Confine Regulation To the Bush, Where A Middle Mile Bottleneck Is Stifling Competition

The Commission has no authority to regulate rates or other terms of BDS in the absence of any evidence that some entity is exercising market power or holding itself out as a common carrier. The Commission consistently has acknowledged that it is justified in regulating prices and other terms of service in markets only in the case of market failure, where an entity possesses market power (or is dominant, in FCC parlance); otherwise the default is to rely on market forces.[35] Indeed, as noted by former FCC Chief Economist Joe Farrell, attempts to

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[34] While the Commission may change its approach, it may do so only after articulating a "rational connection between the facts found and the choices made." *United States Telecomm. Ass'n v. FCC, supra,* slip op. at 42, *citing Verizon v. FCC*, 740 F. 3d 623, 643-44 (D.C. Cir. 2014).

[35] *See, e.g., Orloff v. Vodafone Airtouch Licenses LLC, d/b/a Verizon Wireless,* Memorandum Opinion and Order, 17 FCC Rcd 8987, ¶ 22 n.69 (2002) (in the absence of market failure, the Commission generally relies on market forces rather than regulation), *aff'd, Orloff v. FCC*, 352 F.3d 415, 420 (D.C. Cir. 2003); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, ¶ 173 (1994) ("[I]n a competitive market, market forces are generally sufficient to ensure the lawfulness of . . . terms and conditions of service by carriers who lack

regulate rates in a highly competitive market such as BDS, with its varied and customized services competing with one another, would be extremely inefficient, and more likely to deter rather than stimulate market entry and facilities investment.[36]

The proposed BDS regulations appear to be premised on the false assumption that all ILECs possess an inherent advantage in the BDS market through their "ubiquitous presence" that enables them to furnish BDS on request throughout their territories – an ability, according to the Commission, that "no other competitor can duplicate."[37] In Alaska, this certainly is not the case. As discussed below, BDS is largely provided on a non-common carrier basis by a variety of competitors in Alaska. It is incumbent upon the Commission, lest it discourage investment and market entry, to avoid overly broad regulation, and focus on those segments of the market where regulation is needed because an entity is exercising market power, inhibiting growth of competitive BDS.

Indeed, just last month, the Commission found that ILECs as a class are non-dominant nationwide in their provision of switched access service because, "the overall importance of interstate switched access has continued to decline as consumers have discarded their switched access lines in favor of more advanced technologies. In today's marketplace, incumbent LECs cannot control prices for, and thus lack market power over, interstate switched access."[38] Special access customers are similarly discarding legacy TDM-based special access services in favor of

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market power").

[36] Comcast Comments, Ex. A, Declaration of Joseph Farrell, pp. 19, 30. *See also* CenturyLink August 2 Letter at 2.

[37] Further Notice para. 2.

[38] *Technology Transitions*, GN Docket No. 13-5, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, FCC 16-90 (rel. July 15, 2016), at ¶ 22.

more advanced technologies, including Ethernet and other packet-based services that no longer require direct point-to-point connections. These advances have lowered entry barriers for BDS, including special access services – which have long been considered more susceptible to competitive entry than switched access.[39] These marketplace developments call into further question the need for new BDS regulation.

Alaska already enjoys some of the most intense telecommunications competition in the nation in its most densely populated areas – Anchorage Fairbanks and Juneau – and also is very competitive in rural areas that are linked to those population centers by the state's road system. Where the market already is competitive, and no entity possesses market power, as in Alaska's non-Bush areas, imposing rate regulation would only create barriers to entry, and discourage network investment, contrary to the public interest.[40]

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[39] *See, e.g., Competition in the Local Exchange Telephone Service Market*, NTIA Report No. 87-210 (Feb. 1987), at 5-6 ("[B]ecause dedicated access to a long distance carrier involves only the provision of a nonswitched facility between two points, it can often be provided at a relatively small cost. As a result, RHC [Regional Bell Holding Company] access services to customers with a high volume of long distance calling may be highly susceptible to competitive provisioning . . . . As with access services, a customer may be able to replace RHC-provided point-to-point private lines at relatively low cost with customer-owned facilities or facilities obtained from a non-RHC supplier. Accordingly, the RHCs' point-to-point private line services may be similarly susceptible to competitive provisioning . . . . Multipoint-to-multipoint services are switched offerings that give customers access to other customers connected to a particular network. The basic local exchange services that form the core of the RHCs' businesses are the most familiar example of multipoint-to-multipoint services . . . . Because provision of multipoint-to-multipoint services involves an extensive network of facilities and a large investment in switching equipment, they are the most difficult RHC services to replicate. Accordingly, they may be the least susceptible to competitive entry").

[40] *See, e.g.,* Comcast Comments at 40-42 (regulating rates of market participants that lack market power will likely lead to their cutting capital investment in broadband, citing Chairman Wheeler's previous pledge *not* to regulate rates or require unbundling for broadband services or facilities in order to preserve incentives for network investment).

In Alaska Communications' price cap territory, Anchorage, Fairbanks and Juneau have the highest demand for BDS, and competition is robust in those areas. Indeed, 66 percent of the DS1 and DS3 channel terminations provided by Alaska Communications under its interstate tariff are provided in these three areas.[41] GCI competes on equal (or better) footing with Alaska Communications for the BDS business in the state, with extensive facilities of its own and a statewide customer base.[42] Indeed, Mr. Blessing concludes that it is GCI, not Alaska Communications, that is the larger provider of BDS services, as well as other complex services that rely on BDS, both in the price cap ILEC service territory and in other parts of the state.[43] In recent years, not only Alaska Communications and GCI but also AT&T and other competitors regularly bid for BDS contracts.[44] There can be no doubt that competition is well established in these population centers in Alaska.

In on-road communities outside the three largest population centers, competitive BDS market entry also is relatively easy. In areas such as the Kenai Peninsula, there is less demand

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[41] Alaska Communications, FCC Tariff No. 1, Transmittal Letter No. 47, July 1, 2016 Annual Access Charge Tariff Filings, WC Docket No. 16-71, Supporting Documents: "ACS Rate Detail" (filed June 16, 2016) (showing demand for Special Access High Capacity Channel Termination 1.544 mbps (Line 4571) and Special Access High Capacity Channel Termination 44.736 mbps (Line 4771) for each of the six ILEC study areas served by Alaska Communications).

[42] *See, e.g.,* Blessing Declaration ¶ 5 (the ILEC in Alaska is not the dominant player in the BDS market); *id.* ¶¶ 10-11 (demonstrating GCI's larger share of the BDS market as documented in GCI's statements to the FCC, to investors and to the U.S. Securities & Exchange Commission ("SEC")).

[43] *See, e.g.,* Blessing Declaration ¶11 (noting that GCI has reported to the FCC it can provide broadband services at up to 50 Mbps in almost *60 times* more census blocks than Alaska Communications).

[44] *See* Eisenberg Declaration, *supra* note 32. In disclosure to its shareholders, GCI has observed that its prices for BDS-type offerings have been subject to downward competitive pressure or "price compression." Blessing Declaration ¶11.

than in the three largest communities but two or more providers still are actively competing for BDS customers.[45] The Commission has no basis to conclude that ILEC BDS services should be regulated in these areas.

Monopoly power requires more than merely some degree of market power – it also requires durability – that is, the ability to raise prices or prevent competitive entry over a sustained period of time.[46] Two facilities-based providers, with the potential for additional entry, often are sufficient for a market to be considered competitive – if one provider raises rates, over time customers will migrate to the other competitor. While some may argue that three or four service providers are necessary for effective competition in the business market, the Commission has found to the contrary in Alaska, granting substantial deregulation a number of years ago based just on the vigorous competition between ACS and GCI.[47]

As shown in the following table, USAC data confirm that in high-cost rural areas on the road system, no single entity wins more than 45 percent of the federal support awarded in

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[45] Blessing Declaration ¶6.

[46] *See, e.g., Eastman Kodak Co. v. Image Technical Servs., Inc.,* 504 U.S. 451, 481 (1992). *See also* Colo. Interstate Gas Co. v. Natural Gas Pipeline Co. of Am., 885 F.2d 683, 69596 (10th Cir. 1989). *See generally* William M. Landes & Richard A. Posner, *Market Power in Antitrust Cases*, 94 Harv. L. Rev. 937 (1981).

[47] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act,* WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149 (rel. Aug. 20, 2007) (based on findings regarding the size and scope of GCI's facilities throughout much of the Anchorage study area, as well as GCI's market share, ACS of Anchorage granted forbearance from aspects of dominant carrier regulation in its provision of enterprise broadband services, as well as mass market broadband Internet access and switched access services). *See also Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act,* WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1982 (2007) (subsequent history omitted) (noting that GCI already had "market leading broadband facilities" a decade ago).

connection with enterprise broadband services provided to schools, libraries and rural health care ("RHC") providers.[48]

RHC and E-Rate 2015 Broadband Support Distribution: State of Alaska

Provider	Total AK RHC + E-rate (voice excl.)	RHC + E-rate (voice excl.) – On-Road only	RHC + E-rate (voice excl.) – Off-Road only
GCI (including ILEC affiliates)	76.07%	26.15%	84.81%
Alaska Communications (price cap ILEC)	9.19%	42.86%	3.30%
Others	14.73%	31.00%	11.89%
Total	100.00%	100.00%	100.00%

In the Bush, however, the situation is markedly different from the rest of Alaska. GCI holds a clearly dominant position in serving the Bush, including in the 49 Bush communities served by Alaska Communications, due to its middle mile monopoly. In fact, GCI receives an 85 percent share of the total rural health care ("RHC") and E-rate support flowing to Bush communities.

In total, GCI received E-rate and rural health care funding commitments of some $126 million for 2015, roughly eight times that of Alaska Communications. This is a particularly telling statistic because, in the Alaska Bush, schools, libraries, and rural health care providers represent a substantial portion – in many places, a majority – of the potential market for BDS.

Even limiting the analysis to the price cap ILEC service areas of Alaska Communications yields similar results where GCI dominates the Bush market due to its middle mile monopoly:[49]

[48] Blessing Declaration ¶18.

[49] *Id.* ¶19.

RHC and E-Rate 2015 Support Distribution:
Alaska Communications ILEC Serving Areas

Provider	RHC/Erate (voice excl.) - Alaska Communications ILEC Svc Area	RHC/Erate (voice excl.) - Alaska Communications ILEC Svc Area – On-Road Only	RHC/Erate (voice excl.) - Alaska Communications ILEC Svc Area – Off-Road Only
GCI (incl. ILEC affiliates)	46.40%	27.92%	68.06%
Alaska Communications	31.82%	45.33%	15.98%
Others	21.78%	26.75%	15.96%
Total	100.00%	100.00%	100.00%

In Bush communities served by GCI's publicly-funded monopoly middle-mile transport network, "TERRA," GCI received 90 percent of the 2015 E-rate and rural health care support committed by USAC, including a full 100 percent share – every last support dollar – committed in communities served by Alaska Communications.[50]

Procurement data from the federal General Services Administration and the State of Alaska tell a similar story. From 2014-2016, GCI won over half of the total contract value awarded by the GSA for BDS and related services: roughly $1.2 million out of a total of $2.1 million, compared to $0.3 million for Alaska Communications.[51] Within the price cap local exchange service area of Alaska Communications, the disparity is even more stark: GCI won some $1.1 million out of a total of $1.6 million in total contract value awarded – a 66 percent share – while Alaska Communications won only $0.3 million, roughly a 15 percent share.[52]

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[50] Blessing Declaration ¶22.

[51] Blessing Declaration ¶25.

[52] *Id.*

With respect to the State of Alaska, GCI again comes out far ahead. In the first six months of 2016, GCI received over $2 million, out of a total of $4.1 million, of the state's expenditures on BDS and related services, while Alaska Communications received only $0.7 million.[53]

Carriers such as Verizon that allege that all ILECs possess market power in the BDS sector have failed to make the affirmative case justifying regulation. Indeed, just a few years ago Verizon testified to the highly competitive nature of the enterprise broadband market, arguing that no provider could be deemed "dominant" in this market, and opposing ILEC regulation.[54] Similarly, Sprint's assertion that all ILEC BDS rates should be slashed from current levels is not supported by data, but is simply another refrain in Sprint's decade-long pitch to cut wireless carriers' own costs at the expense of those who deploy and operate wireline broadband networks.[55]

In fact, BDS providers in Alaska are competing head-to-head on price to the point where the competition is affecting the bottom line.[56] In recent calls with investors, GCI management has disclosed the price impact that competition in the BDS market has been having – discussing

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53 *Id.* ¶24.

54 Comments of Verizon in WC Docket No. 11-188, p. 10 *et seq*. (filed Dec. 20, 2011) ("Verizon 2011 Comments").

55 *See, e.g.,* Verizon 2011 Comments at 15 (observing that Sprint has benefitted financially from significant price competition in the enterprise broadband services market, and citing Sprint reports touting extensive choice in the wireless backhaul market).

56 *See* General Communication, Inc., Annual Report (Form 10-K) at 15, 34-36 (Mar. 3, 2016) ("GCI 2015 Form 10-K").

the competitive nature of the contracting process, the constraint on pricing, and the churn in the marketplace.[57]

Sprint and Windstream also grossly generalize when they argue that entire classes of service – for example, fiber-based services above 50 Mbps or TDM-based services at or below 50 Mbps – should be deemed categorically non-competitive.[58] This is simply not accurate in Alaska.

Alaska Communications takes issues with the implication that *any* entity in Alaska could be considered "dominant" (possess market power) in the market for services above or below 50 Mbps, with the exception of isolated Bush communities, as discussed below. As GCI has observed, because of robust competition, business customers in *rural* Alaska are receiving broadband services that are reasonably comparable to those available in the Lower 48 states.[59]

However, a very different environment exists in Bush Alaska.

In the Bush, customers are not on any road system, electrical grid, or fiber optic cable network linking their locations to any other communications facilities. Alaska Communications has extensively studied the problem of serving Alaska's Bush locations. The principal problem is the absence of infrastructure, particularly middle-mile telecommunications facilities, linking

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[57] *See* Blessing Declaration ¶11 (citing John Lowber, GCI Earnings Report, 1st Quarter 2013).

[58] Comments of Windstream in WC Docket No. 16-143 (filed June 28, 2016) at 15 (the record establishes a lack of competition for fiber-based services above 50 Mbps); Comments of Sprint in WC Docket No. 16-143 (filed June 28, 2016) at 15 (all TDM-based services at or below 50 Mbps should be presumed to be non-competitive).

[59] Letter from Tina Pidgeon, GCI, to Marlene H. Dortch, Secretary, WC Docket No. 10-90 *et al.*, Presentation, "GCI: Transforming Alaskan Communications Through Competition," at 1 (filed April 30, 2010).

these locations and other communities and access points;[60] or where such infrastructure exists, appropriate rules to ensure non-discriminatory service over that infrastructure are not enforced. The cost to deploy, maintain and operate advanced middle mile facilities in the Bush is sufficiently high that it generally has precluded commercial deployment except with the aid of government subsidies.

Without access to sufficient, affordable middle-mile infrastructure, service at the end-user level remains inadequate, and market entry is prohibitively expensive.[61] Indeed, examining publicly available data by location, there is a wide gap between locations on the road system and those that are off the road system, both in competitive presence and in the availability of high-capacity services.[62] In Bush Alaska, it is the ILEC that lacks access to middle mile facilities (with the exception of the ILEC affiliated with GCI), and it is the ILEC that has no ability to deploy BDS as a result.[63]

Thus, the Further Notice errs, at least as far as it concerns Alaska, in positing that the ILEC possesses market power. As Mr. Blessing testifies, in both urban and rural Alaskan communities on the road system, where it is common for two carriers to offer terrestrial middle

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60 *See, e.g.,* Blessing Declaration ¶ 6 (domination in the Alaska BDS market comes not with control of the customer connection but rather with control of middle mile facilities").

61 Blessing Declaration ¶ 6.

62 Blessing Declaration ¶ 23 (in Bush communities within Alaska Communications' ILEC territory, GCI receives more than two-thirds of the E-rate and RHC support); *id.* ¶18 (in Bush communities in the state as a whole, GCI receives nearly 85 percent of the E-rate and RHC support); *id.* ¶22 (in areas served by GCI's TERRA middle-mile network, GCI receives more than 90 percent of the E-rate and RHC support).

63 Blessing Declaration ¶¶ 8-9. Mr. Blessing also explains the correlation between access to middle mile capacity and the ability to win significant BDS contracts, such as from rural health care ("RHC") facilities operators, E-rate customers, and government agencies. *Id.* ¶¶18-26.

mile capacity in competition with each other, the BDS market is competitive, with no dominant party. "For those off the road system the level of competition declines dramatically and a single provider is clearly dominant."[64] That provider most often is not the ILEC but GCI.[65]

While the overall revenue potential in the Bush may be relatively small, Alaska Communications has a long history of serving the Bush, with 49 remote Bush communities within its price cap ILEC service footprint. The reason that carriers such as Alaska Communications have such great difficulty offering BDS or other advanced services to the Bush is the lack of adequate, affordable middle mile infrastructure connecting the Bush to Anchorage, the Internet, and the outside world. Simply put, shere competitive middle mile infrastructure is available, BDS prices are lower than in areas without access to competitive middle mile networks.[66]

In most of the Bush communities served by Alaska Communications, no terrestrial-based middle-mile infrastructure has been deployed. In four of the 49 Bush communities where Alaska Communications is the ILEC, limited fiber-based middle-mile capability has been deployed, but *the only entity providing services above the DS1 level to those communities today is GCI.*

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64 *Id.* ¶6.

65 *Id.* ¶¶7-8. Although in many off-road communities, providers other than GCI or Alaska Communications provide BDS, those tend to be small ILECs providing service in very limited geographic areas – sometimes a single Bush village. GCI, in contrast, operates a comprehensive statewide network that is necessary not only for its own BDS operations but to link those small ILECs' networks to any and all outside points – without which their BDS offerings would be worthless.

66 Blessing Declaration ¶¶6-7. Indeed, even in the Lower 48 states, the Rural Wireless Association observes that backhaul to remote communities tends to be excessively priced and an impediment to broadband availability. Comments of Rural Wireless Ass'n in WC Docket Nos. 16-143 *et al.,* 2-4 (filed June 28, 2016).

Alaska Communications cannot provide an affordable end-user service if it pays GCI's charges for wholesale access to the middle-mile infrastructure serving those four communities.

GCI is the Alaska cable television operator and local and long-haul telecommunications carrier with the most extensive network of satellite, microwave and fiber-based middle-mile facilities across the state; as such, GCI controls all of the terrestrial middle-mile facilities reaching 72 of the state's 188 Bush communities.[67] Most of the Bush is limited to satellite backhaul.[68] Without public funding, deployment of terrestrial middle-mile infrastructure has been and will remain cost-prohibitive. As a result, the middle-mile bottleneck severely constrains the availability of broadband and other advanced services, as well as competitive entry, in the Bush.[69]

The prices charged by GCI for competitive access to its TERRA-SW middle-mile network linking dozens of Bush communities confirms the conclusion that GCI is exercising market power in the Bush.[70] GCI asks $9,500 per Mbps per month for an Ethernet connection on TERRA-SW.[71] (That price may be lowered for customers that agree to volume and term discounts that range up to competition-killing *25-year* contract for at least 400 Mbps.)[72]

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67 *See* GCI website at: https://www.gci.com/~/media/files/gci/regulatory/tariffs/gci_terra_posting_effective_07_29_15_final.pdf?la=en

68 Blessing Declaration ¶ 15.

69 Blessing Declaration ¶ 9. As Mr. Blessing observes, satellite backhaul poses serious problems for broadband performance in terms of capacity, latency, and reliability. *Id.* ¶15.

70 Blessing Declaration ¶6 ("For those off the road system the level of competition declines dramatically and a single provider clearly is dominant").

71 Blessing Declaration ¶ 16 & n. 30 (based on hub port charge of $1,000 and edge port charge of $8,500).

72 *Id*.

Federal support data available from the Universal Service Administrative Company ("USAC") similarly reveal that GCI dominates the contracts in rural Alaska for E-rate and RHC-supported broadband services, but especially so in the Bush. In off-road areas, GCI garners about 85 percent of all RHC and E-rate support. In contrast, Alaska Communications wins just three percent, and the other ILECs a combined total of twelve percent.[73] In the areas of the Bush served by GCI's TERRA-SW middle-mile network, GCI's share of RHC and E-Rate support is even higher – a whopping 90 percent, with other carriers sharing the remaining ten percent of the support (Alaska Communications receives zero).[74] Clearly, GCI enjoys a unique market position in Bush Alaska. Only regulation of GCI middle-mile rates in the Alaska Bush (or funding a competitive alternative)[75] will address this bottleneck.

The Commission over-generalizes when it assumes that the ILEC always will be the largest provider in a market, or the provider with market power in a non-competitive market.[76] In Alaska, it is the cable operator, GCI, that is the largest provider in the state and the dominant provider in the vast majority of local markets; and in those locations where one entity possesses

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[73] Blessing Declaration ¶ 18. Isolating the service footprint of Alaska Communications, GCI still commands 68 percent of the support in the off-road areas, Alaska Communications just 16 percent, and third-party competitors another 16 percent. *Id.* ¶ 19.

[74] Blessing Declaration ¶ 20.

[75] Alaska Communications has proposed that the Commission direct funds to a single middle-mile network to be operated on a competitively neutral basis so that all carriers could provide BDS and other broadband services in the Bush. *Connect America Fund*, WC Docket No. 10-90, *Ex parte* Letter from Karen Brinkmann, Counsel for Alaska Communications, to Marlene H. Dortch, Secretary, FCC (filed Nov. 19, 2015), Attachment: "Closing the Middle Mile Gap In Alaska: A Proposed Plan of Action for All of Alaska." To date, the Commission has not acted on this proposal.

[76] *See, e.g.,* Tariff Investigation Order para. 2.

market power, that entity is GCI, not the ILEC.[77] The reason is the middle-mile deficit in Bush communities. Bush locations are unique among Alaska communities for their lack of competition for BDS and other broadband-based services, not because the ILEC possesses market power, but because of the lack of affordable middle-mile infrastructure creating a bottleneck that requires regulation.[78]

The lack of attention to the Alaska market in the record in this proceeding is significant. None of the comments that support Commission regulation of BDS in general mention Alaska as a market in need of regulation.[79] Only the comments of Alaska Communications have identified a market failure in Alaska, and that is in the Bush, where customers lack access to competitive alternatives because of inadequate middle-mile infrastructure.

Thus, to the extent regulation is justified in Alaska, it is justified only in the Bush, to address a genuine bottleneck controlled by an entity with real market power. In the rest of Alaska, competition already is effectively regulating prices and promoting output, as any good regulator would hope, rendering interference with the market unnecessary and undesirable.

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[77] Blessing Declaration ¶ 8 ("control of bottleneck facilities does not lie with the [ILECs] nor is the largest ILEC the largest communications provider in the state. Instead, the dominant provider in Alaska is an IXC/cable company which controls the only terrestrial middle mile facilities in the Alaska Bush"). *Id.* ¶¶ 17-24 (demonstrating little competition for federal universal service support in areas off the road system, in contrast to areas on the road system where competition is robust).

[78] *See* Blessing Declaration ¶ 6 ("In the major population centers there are multiple middle mile providers but in the Alaska Bush, defined as areas that are off the state's road system rail belt, electric grid and without connection via undersea fiber optic cable, there is no more than one").

[79] Commenters that are intensely critical of ILEC practices in other states, including Windstream and Sprint, raise no concerns about Alaska *per se*. They merely make blanket assertions about the state of competition nationwide. *See, e.g.,* Comments of Sprint, Comments of Windstream, *supra,* note 58. Such comments ignore the presence of actual competition throughout non-Bush Alaska using fiber, cable and wireless technologies.

III. In A Market That Is Deemed Non-Competitive, the Record Supports Regulating Only One Provider -- The Dominant Entity

The Commission ought to regulate only one entity in any geographic area deemed "non-competitive," and that entity should be the one that has the ability to dominate the market. In Alaska, that means regulating GCI, particularly in the Bush. Where the ILEC is price-cap regulated it already is price-constrained; its customers are protected by a host of FCC regulations. It is GCI, however, with its control of the middle-mile bottleneck, that has the market power, and ought to be constrained by regulation.

Alaska Communications has documented the extent of the middle-mile deficit in Bush Alaska. Bush locations are typically uneconomic to serve without substantial amounts of federal support. Fewer customers in the Bush support at most two or three competitors.

However, there is one entity with extensive federally-subsidized facilities throughout the state, even in the Bush. That entity, GCI, has boasted at least since 2014 that it owns and operates the largest terrestrial broadband network in the state.[80] It touts its many types of high-speed data service offerings, including business offerings with service level guarantees, managed

[80] *See* "Juneau School District RFP 2014 – TS Telecommunication Services," (Dec. 5, 2014) at 4 ("GCI owns and operates the largest, most diverse redundant fiber network in Alaska and down to the lower 48. In addition, GCI owns and operates facilities to more than 220 points of presence (POPs) throughout Alaska. Our network consists of Layer 1, 2, and 3 platforms, utilizing fiber, copper, and satellite mediums. GCI's AdvantageIP MPLS VPN includes a commercial Service Level Agreement (SLA) that guarantees 99.95% uptime. With more individual GCI employees living in Juneau than any other telecommunication provider in Alaska, GCI has the feet on the street necessary to rapidly respond to any problem that may occur") ("Juneau 2014 School District Proposal"); s*ee also* GCI, "A Proposal Offered to Juneau School District in Response to RFP 2016-TS Telecommunication Services," (Jan. 20, 2016) at 1 (GCI is "the largest provider of Internet and networking services in Alaska" and "the largest education service provider"); *id.* at 10 ("Of Alaska's 20 largest school districts and 100 libraries, all with varying requirements and connectivity services available to them, GCI SchoolAccess installed connectivity services to 17 school districts and 69 libraries").

IP, security, redundancy, and variable bandwidths.[81] As of 2013, GCI boasted that its video-conferencing network was "the largest in Alaska."[82] It states that among its 50 largest enterprise customers GCI has an average tenure of 15.78 years.[83]

Alaska stands in contrast to the markets described in the Further Notice where the dominant provider typically is the ILEC. Alaska Communications neither agrees nor disagrees with that assumption as it pertains to the rest of the country, but it does not hold true in Alaska. In Alaska, in those locations where there is not effective competition – namely, in the Bush – the "dominant" provider almost always is the cable system operator, which controls not only the most extensive network of fiber facilities in the state[84] but also state-wide middle mile capacity that other service providers cannot access.

Upon finding that a dominant provider has erected barriers to entry in the Alaska Bush, the Commission should appropriately regulate that entity. This means evaluating the rates and terms on which middle-mile capacity is made available and comparing them to some reliable measure of "market price." For example, the use of a forward-looking model to establish a rate cap would constrain rates to a level expected of an efficient provider; alternatively, a cost showing could be used to establish reasonable baseline rates. It does not mean the Commission should regulate every point-to-point route as a separate "market." Such a system would be administratively unworkable, as Professor Farrell states.[85] Certainly, it would not make sense in

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81 *E.g.,* GCI 2013 Form10-K at 18-20.

82 *Id.* at 21.

83 GCI Response, "State of Alaska RFP #2015-0200-2583 Core Telecommunications Services," July 16, 2014 (Attachment C – Service Plan) at 5.

84 *See* GCI 2014 Juneau School District Proposal, *supra*, note 80.

85 Comcast Comments, Joseph Farrell Declaration, pp.19-22 *et seq*.

the case of Bush communities in Alaska.[86] It does mean that the Commission should find a way to regulate prices on fiber-based middle-mile capacity in the Bush until barriers to entry are removed.

Sprint's proposals to regulate wholesale and retail BDS as separate "markets" and impose mandatory discounts on wholesale prices,[87] besides having no foundation in the Communications Act, make no sense for Alaska. Historically, the Commission has required regulated telecommunications services to be priced on a non-discriminatory basis regardless of the customer's purpose in purchasing them (including whether or not for wholesale use). In general, where an entity controls essential bottleneck facilities, it has the capability to exercise market power at the wholesale level as well as at the retail level. In Alaska, GCI's control of the wholesale middle-mile capacity input affects both wholesale and retail service competition.[88] It is only GCI that can provide high-speed broadband to far more census blocks than any other provider, has the most extensive fiber network, has the largest market capitalization, earns the most revenue, *and* receives the greatest amount of federal support for broadband connections to the Bush.[89] GCI possesses market power because of its unique stranglehold on middle-mile facilities. The Commission should declare middle-mile transport to the Bush a separate "market" from other BDS offerings, and regulate the dominant provider, GCI, accordingly.

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[86] GCI uses a postalized rate system for TERRA-SW – all rates are the same regardless of destination. See note 67, *supra*.

[87] Sprint Comments at 71.

[88] *See* Blessing Declaration ¶7.

[89] *See* Blessing Declaration ¶¶10-12 *et seq*.

IV. Conclusion

For the foregoing reasons, the Commission should not impose price regulation on BDS offered in Alaska Communications' Anchorage, Fairbanks, and Juneau service areas nor its competitive rural areas; rather, the Commission should impose targeted regulation on the largest provider in Alaska, GCI, and only GCI, because GCI operates bottleneck middle-mile facilities to the Bush, without access to which BDS cannot be competitively provided to those communities.

Respectfully submitted,

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August 9, 2016

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Business Data Services in an Internet Protocol Environment	)	**WC Docket No. 16-143**
	)	
Special Access for Price Cap Local Exchange Carriers	)	**WC Docket No. 05-25**
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	**RM-10593**
	)	

Reply Comments of Alaska Communications

Attachment A

Declaration of David C. Blessing

Statement of Qualifications

1. I have over twenty-seven years of experience in the area of economic and financial analysis. For the last twenty-three years I have been a principal in the economic consulting firm Parrish, Blessing & Associates, Inc. Our firm provides economic, financial and management consulting services primarily to regulated utilities and telecommunications companies in the continental United States and U.S. territories. Prior to this experience I held the position of Senior Economist at Rochester Telephone Corporation. While at Rochester Tel and in my current position, I have testified as an expert witness in several proceedings before state and federal courts, the Federal Communications Commission ("FCC") and several state regulatory commissions on regulatory matters, as well as on the calculation of economic

damages for class action suits and employment disputes. My professional background also includes an appointment to the faculty of Nazareth College of Rochester, where I taught courses in economics and finance. I hold a Bachelor of Arts degree from Kalamazoo College and a Master of Arts degree in Economics from Fordham University. In addition, I have successfully completed all required course work and comprehensive exams for my doctorate in economics.

For the past seventeen years I have been working in Alaska for Alaska Communications and other telecommunications clients. My firm also works with municipalities and electric, gas, water, and waste water utilities around the state providing economic and regulatory analysis.

2. A detailed summary of my background is included as EXHIBIT DCB-1.

Purpose and Summary

3. The purpose of my declaration is to discuss the implications of the Federal Communications Commission ("FCC") proposals a develop and apply a Competitive Market Test ("CMT") to areas in Alaska served by a price cap carrier. In addition, I will demonstrate through the use of publicly available data that any conclusion that the price cap carrier in Alaska has market power is unfounded.

4. The FCC's proposals are set forth in its *Tariff Investigation Order and Further Notice of Proposed Rulemaking* ("Order/FNPRM"). The Commission's intent is to apply the results of analysis of the data collected as part of its Special Access Data Collection ("SADC") proceeding in order to determine what price cap areas are not competitive with regard to Business Data Services ("BDS"). The areas determined by the CMT to be competitive will not be regulated while those determined to be non-competitive will face an updated version of price cap regulation. The Order/FNPRM discusses the need for a

new CMT for BDS because the previous triggers did not accurately reflect the level of competition in all areas.[1]

5. As the Commission has acknowledged in the past, Alaska is characterized by many unique demographic, geological and geographic attributes. Based on the presumptions found in the Order/FNPRM it is clear that Alaska is unique in another way – the ILEC is not the largest nor the dominant player in the Alaska BDS market. As a result, many of the conclusions reached by the Commission and the implications stemming from analysis of the SADC data are not reliable for Alaska. This should not be unexpected when attempting to apply a single methodology to diverse areas across the country. In fact, it should be expected that a nation-wide methodology will not function well in markets as unique and diverse as those found in Alaska. The introduction of a new CMT mechanism will not change the fact that Alaska markets are unlike the rest of the country and any evaluation of the level of competition in Alaska must be viewed differently. This is clear when a review of the assumptions underlying the FCC's analysis and conclusions regarding BDS competition can be shown not to hold. That, coupled with the limitations of the data collected in the FCC's SADC recognized by the Commission and Dr. Rysman's White Paper attached to the Order/FNPRM, requires that the results of additional analysis of the Alaska market be considered before decisions about what areas need to be re-regulated, regulated or not regulated can be made.[2]
6. Publicly available data will show that competitive forces in most population centers are holding down prices and spurring innovation, while in isolated Bush communities (defined below) a single provider is dominant and able to exploit market power. The difference

[1] Order/FNPRM at ¶290.
[2] Order/FNPRM at ¶¶ 160,191-192 and Rsyman White Paper at 202.

between Alaska and the rest of the country is that because of Alaska's unique level of isolation and its geography, domination in the BDS markets comes not with control of the customer connection but rather with control of middle mile facilities. In the major population centers there are multiple middle mile providers and competitive middle mile infrastructure has been deployed even in rural communities on the road system. However, in the Alaska Bush, defined as areas that are off the state's road system, rail belt, and electric grid, and without connection via undersea fiber optic cable, there is no more than one middle mile provider.[3] Examination of publicly available data from the SADC, USAC and other sources clearly shows the impact of control over middle mile facilities on the level of competition and price. In Anchorage, Fairbanks and Juneau, the states three major population centers, competition between the two middle mile competitors have resulted in downward pressure on prices.[4] Outside of the Anchorage, Fairbanks and Juneau, communities on the road system, such as those on the Kenai Peninsula where two or more carriers offer terrestrial middle mile, the number of BDS-type circuits appears to be split amongst several providers with no clear dominant party. For those off the road system the level of competition declines dramatically and a single provider is clearly dominant.

7. For communities served by GCI's TERRA SW fiber/microwave middle mile network, a government subsidized network serving rural communities where no alternative terrestrial middle mile option exists, the data confirm GCI's monopoly control. In these areas GCI lacks any incentives or obligation to hold down retail prices or to provide access to other carriers on a wholesale basis at reasonable rates. Any entity that participates in both the

[3] In some areas of the Alaska Bush there are no providers of middle mile transport.
[4] John Lowber, Transcript GCI 1st Qtr 2013 Earnings Call, http://seekingalpha.com/article/1397151-general-communications-management-discusses-q1-2013-results-earnings-call-transcript?page=12

retail and wholesale markets for a service while controlling an essential wholesale input effectively has control of the retail as well as the wholesale markets. GCI is doing just that in the Alaska Bush. GCI's very high prices for wholesale middle mile transport, a necessary input to retail BDS services, act as a barrier to competitive entry in both the wholesale and retail markets. As a result, GCI's middle mile dominance in the Bush allows it to charge wholesale customers rates that are significantly higher than even the satellite rates the TERRA network was intended to undercut. Without access to the essential middle mile input at reasonable wholesale prices, potential competitors in the retail markets are barred from entry. As an unregulated provider in the TERRA communities with the availability of federal support and without any requirement to provide cost support for its prices, GCI has no incentive or any other constraint to restrict price levels. To put it in the terms used in Dr. Rysman's White Paper, the price of BDS service in Alaska is lower when middle mile competition exists and where there is no middle mile competition the prices are substantially higher.[5]

8. The examination of these additional data sources makes clear there is no need to regulate BDS service in urban areas and those rural areas on the road system where competitive middle mile facilities exist that effectively lower barrier to entry for BDS. In contrast, there is a real need to regulate middle mile in those areas off the road system with a single provider, if any, of terrestrial middle mile facilities. Contrary to the assumptions in the Further Notice, control of bottleneck facilities does not lie with the Incumbent Local Exchange Carriers ("ILECs") nor is the largest ILEC the largest communications provider in the state. Instead, the dominant provider in Alaska is an IXC/cable company with the

[5] Marc Rysman, "Empirics of Business Data Services," White Paper, Table 3 (April 2016) (Rysman White Paper). Order/FNPRM Appendix B at 200.

largest terrestrial middle mile network in the state including the only terrestrial middle mile facilities in the Alaska Bush.

The Underlying Assumptions of the Commission's Analysis Does Not Hold in Alaska

9. The Commission's analysis of the BDS market hinges on the assumption that if market power exists, it is held by the ILEC.[6] This assumption is evident from the direction of the Commission's analysis that focuses on the impact of the presence of competitive providers, or the threat of their entry, on ILEC BDS rates. Dr. Rysman's states this assumption even more directly -- "… conventional wisdom is that ILECs hold any market power that exists … so my focus on facilities-based entry and ILEC prices is not particularly restrictive."[7] I would agree with Dr. Rysman that focusing on entry into ILEC markets and ILEC prices would be appropriate if the ILEC controlled bottleneck facilities necessary for competitive entry. It is a different story, however, today in Alaska where that underlying assumption doesn't hold. In Alaska, the ILEC is not the largest telecom provider even in its own service territory, nor does it control bottleneck facilities necessary for the provision of BDS. A review of publicly available data shows that the dominant provider in the state is General Communications, Inc. ("GCI"). The bottleneck is middle mile infrastructure serving Bush communities. GCI controls that bottleneck. In the Order/FNPRM the Commission asked whether it would be appropriate to limit regulation in markets determined to be non-competitive only to the largest provider of BDS services.[8] While regulatory price constraints applied only on the dominant provider is an effective way to replicate competitive price levels in non-competitive markets, it is more important to

[6] Order/FNPRM at ¶ 2, ¶52.
[7] Rysman White Paper at 203
[8] Order/FNPRM at ¶ 308.

recognize that such a policy will not have the desired result if the dominate provider in not correctly identified. In the case of BDS, the dominant provider is not the ILEC in all markets, contrary to the presumptions made in the Order/FNPRM. To the extent market power exists in Alaska, it is important that the dominant carrier be correctly identified -- through a comprehensive review of publicly available sources as well as information obtained through the SADC -- and not assumed to be the ILEC.

In Alaska the ILEC is Not the Dominant Provider of BDS

10. An underlying goal of the Commission's analysis of BDS markets is to empirically test whether the triggers and methodologies included in existing rules accurately determine whether the level of competition ensures that BDS prices were constrained and anti-competitive terms and conditions avoided.[9] The survey design and analysis methodology assume that the ILEC is the primary player in the market and that smaller competitive providers may be subject to financial and entry barriers when attempting to compete.[10] The assumption is not correct in Alaska. The single price cap carrier in Alaska, Alaska Communications, is several times *smaller* than the largest competitive provider, GCI. GCI is the market leader in overall market share even in areas where Alaska Communications provides local service as the ILEC, has a greater network reach and footprint, many times more revenue, and a much larger market capitalization and several times more assets. GCI provides local telephone service, broadband services; data and managed data services, cable television and mobile wireless services.[11] Alaska Communications competes with

[9] Rysman White Paper, Attachment 4 at 241.
[10] Order/FNPRM at ¶2.
[11] GCI 2015 10-K Report at 9.

GCI in all but the cable TV and mobile wireless service categories. Both companies operate predominantly in Alaska. However, by any measure, GCI is the larger service provider. The table below compares the two companies:

Financial Comparison: GCI and Alaska Communications

		GCI		Alaska Communications
Market Capitalization	$	540,150,000	$	86,070,000
Total Assets (Net)	$	1,982,308,000	$	463,601,000
Total Revenue	$	978,534,000	$	232,817,000
BDS Revenue				
Business Services: Data	$	142,033,000		
Business Managed Broadband Data	$	127,083,000		
Business Broadband			$	50,007,000
Managed IT Services			$	3,316,000
Wholesale			$	36,792,000
Total BDS Revenue	$	269,116,000	$	90,115,000

Sources:

Market Capitalization	Yahoo Finance: Aug 3, 2016
Total Assets (Net)	2015 10-K Report: GCI page 26; Alaska Communications F-4
Total Revenue	2015 10-K Report: GCI page 26; Alaska Communications F-4
BDS Services Revenue	2015 10-K Report: GCI page 32; Alaska Communications page 37

The table shows that GCI is three to five times larger than Alaska Communications in market cap, assets and revenues. This conclusion is based on statements made by GCI and Alaska Communications in their respective filings with the U.S. Securities and Exchange Commission ("SEC") and to investors. In almost all of GCI's public statements, including earnings calls, annual reports, and press releases, the company opens by stating that it is largest player in the Alaska market. In some cases, the statement is made in reference to revenue, in others to the amount of fiber across the state or the number of business customers. In a recent service proposal, GCI stated:

> With more than 75% of Alaska's top 250 businesses counting on GCI to provide their daily telecommunication services, GCI is the premier integrated communications provider in Alaska.[12]

Alaska Communications agrees, stating:

> Our principal facilities-based competitor for voice and broadband services is GCI, who is also the dominant cable television provider in Alaska. In the business and wholesale market, GCI holds a dominant position through its extensive fiber optic, microwave and satellite based middle mile network as well as its undersea fiber cable network…[13]

11. GCI also has a much greater share of the BDS market in Alaska. GCI earns almost three times as much revenue from services related to BDS as ACS earns. Both companies also acknowledge that the markets for BDS where both participate are highly competitive. In its 2015 10-K filing with the SEC Alaska Communications admitted that the "telecommunications industry in Alaska is competitive and creates pressure on our pricing and customer retention efforts" while citing GCI as its principal competitor.[14] GCI acknowledged the impact of competition on prices in its 1st Quarter 2016 Earnings Report attributing declining year over year BDS revenues on "rate compression in the data market."[15] In earnings calls John Lowber, GCI's CFO, has been equally frank about the impact of competition in the BDS market on prices, stating,"we see a little bit of margin compression every time new circuit comes up for rebid and that type of thing. So we are always fighting with the margin issues…"[16] That the BDS market in Alaska is competitive

[12] 10/8/14 Wireless Proposal City and Borough of Juneau
[13] ALASKA COMMUNICATIONS 2015 Annual Report at 18.
[14] *Id*.
[15] GCI 1st Qtr 2016 Earnings Report, http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle&ID=2165073
[16] John Lowber, Transcript GCI 1st Qtr 2013 Earnings Call, http://seekingalpha.com/article/1397151-general-communications-management-discusses-q1-2013-results-earnings-call-transcript?page=12

has been known to the participants for many years. As far back as 2008, Mr. Lowber discussed the impact of competition on GCI's ability to control prices:

> Our largest carrier customer's contract expires at the end of the year. The second largest carrier contract is up here in the relatively near future. We expect to keep both of those carries on our network. I think we said probably two year ago we may announce that fiber cable, that we expect to see 30% to 40% price compression in the enterprise and carrier market and it's fair to say we haven't been disappointed in that expectation.[17]

Other sources corroborate GCI's relative dominance in the business broadband market in Alaska. The FCC's Form 477 Broadband Deployment Data also show that GCI reports that it can provide broadband services, up to 50 Mbps, to almost 60 times more census blocks than Alaska Communications reports it can reach. One of the FCC's assumptions underlying its analysis is that "incumbent LECs in their home territories remain a ubiquitous presence, easily able to provide BDS to virtually all enterprise locations in a manner that no other competitor can duplicate."[18] The Form 477 data are just one more piece of evidence demonstrating that this assumption does not hold in Alaska.

[17] John Lowber, Transcript GCI 4th Qtr 2008 Earnings Call, http://seekingalpha.com/article/125737-general-communications-inc-q4-2008-earnings-call-transcript?page=8

[18] Order/FNPRM at ¶ 2.

FCC Form 477 June, 2015: Census Blocks Served 1MB Down / 1MB Up		
HoldingCompanyName	TechCode	CountOfBlockCode
Alaska Communications Systems Holdings, Inc.	11	1,525
Alaska Communications Systems Holdings, Inc.	12	2,410
General Communication, Inc.	10	358
General Communication, Inc.	41	584
General Communication, Inc.	42	8,635
General Communication, Inc.	70	2,254

FCC Form 477 June, 2015: Census Blocks Served 50MB Down / 10MB Up		
HoldingCompanyName	TechCode	CountOfBlockCode
Alaska Communications Systems Holdings, Inc.	11	48
Alaska Communications Systems Holdings, Inc.	12	88
General Communication, Inc.	42	7,807

12. Dr. Rysman describes a three-pronged test to determine the existence of market power:[19]

    a. Relative revenue market shares,
    b. Number and type of market entrants in across entire market area, and
    c. Analysis of whether price is constrained

Applying Dr. Rysman's methodology to the BDS market in Alaska clearly shows that, despite Commission presumptions to the contrary, the ILEC in Alaska does not possess market power. GCI, the competitive provider, clearly maintains a dominant position in terms of relative revenue market shares. GCI serves 75% of Alaska's enterprise customers and earns almost three times the amount of BDS-type revenue as Alaska

[19] Rysman White Paper at page 200.

Communications, the price cap ILEC. GCI's more extensive fiber and fiber/microwave terrestrial middle mile network provides it with a competitive advantage over Alaska Communications in areas served by both and allows it to enjoy monopoly-like dominance in in areas where it is the only terrestrial middle mile provider. Dr. Rysman's third prong also supports the conclusion that Alaska Communications does not possess market power because, as both GCI and Alaska Communications admit to investors and the investment community, the high level of competition in the BDS markets in Alaska results in continuous downward pressure on prices – or price compression. In his conclusion, Dr. Rysman states that ILECs "are an outsized presence in this industry" and analysis of the SADC data indicate that based on revenue shares "ILECS dominate the market for facility-based service in their regions."[20] The data analyzed by Dr. Rysman also indicated that ILECS provided BDS services to far more locations than competitive providers.[21] Based on the regression equations estimated by Dr. Rysman similar conclusions could be reached using price data.[22] A preliminary review of the SADC data for Alaska appears to indicate that the ILEC is dominant in terms of revenue share and locations. However, the above discussion clearly shows that the SADC data are not consistent with other publicly available data that clearly show that, in the case of Alaska, the ILEC is clearly not dominant. An analysis of these other data sets and applying it to Dr. Rysman's criteria for market power, there is no indication that the ILEC has any market power in Alaska. As discussed in more detail below, given the acknowledged

[20] Rysman White Paper at 221.
[21] *Id*.
[22] *Id*.

limitations in the SADC data and the inconsistency with the other data discussed herein, the SADC data should not be relied on to determine if an area is competitive.

Observed Limitations in the SADC Data May Explain Why the Data Incorrectly Imply that the ILEC is Dominant in the BDS Market in Alaska

13. A preliminary review of the SADC data for Alaska indicates that Alaska Communications provides BDS to several times the number of locations compared with GCI, and earns several times the revenue from BDS services. This result holds whether considering circuit-based services or packet-based data circuits. These results, however, are not consistent with what both parties have acknowledged in their public statements to investors and publicly released SEC financial statements. The likely cause of this inconsistency are issues with the SADC data that are discussed by the Commission in the Order/FNPRM and by Dr. Rysman in his White Paper. For example, the exclusion of "best effort" services that may well compete with ILEC DS1 and DS3 services, and the inability to break out the BDS revenue included in managed service contracts for competitive providers, have been well hashed in the comments filed by parties to this proceeding and need not be repeated here.[23] It is likely that the SADC results showing Alaska Communications earning multiple times the revenue from BDS-type services more than GCI demonstrates the unreliability of the data, in light of SEC reporting showing that GCI earns three times the revenue of Alaska Communications in BDS-type service revenue. It is clear that the SADC data cannot be relied on to determine whether ILEC BDS services in Alaska should be re-regulated or more heavily regulated.

The Largest Bottleneck in Alaska is Not the Local Connection Rather the Lack of Access to Middle Mile

[23] *See e.g.,* Order/FNPRM at ¶¶ 160,191-192 and Rsyman White Paper at 202.

14. The Commission expects that where there is a single provider with market power in an area that provider will be the ILEC. The Order/FNPRM states; "incumbent LECs in their home territories remain a ubiquitous presence, easily able to provide BDS to virtually all enterprise locations in a manner that no other competitor can duplicate."[24] The Commission's assumes that the ILEC controls or has reasonable access to the middle mile facilities necessary to carry traffic from enterprise customers to the rest of the world. However, contrary to the Commission's expectations, the ILEC in Alaska cannot provide BDS to enterprise customers across its local serving area if it does not have access to middle mile facilities. Alaska is unique in the nation because the lack of availability and affordability of middle mile facilities poses a bottleneck for connecting remote areas in Alaska to the rest of the world. In Alaska, most Bush communities have no access to the terrestrial middle mile facilities required for BDS services. Those that do have access typically have only one option, and that option is almost always controlled by GCI.

15. In the three major population centers in Alaska, Anchorage, Fairbanks and Juneau, there are at least three providers of terrestrial middle mile, including undersea transport to internet peering locations in Oregon and Washington State.[25] The presence of three providers of terrestrial middle mile connecting these areas has resulted in vigorous competition and declining prices in the BDS market in the three population centers.[26] The same holds true in rural communities provided they are on the road system and the electric power grid, or linked by fiber to the undersea cables serving the state. For example, fiber

[24] Order/FNPRM at ¶ 2.
[25] ATT Alascom has IRUs to Anchorage, Fairbanks and Juneau, and therefore qualifies as a potential middle mile provider.
[26] GCI 2015 10-k at 34 and Declaration of Alaska Communications Comments: David Eisenberg Declaration at page 3.

connects Deadhorse up on the North Slope to Alaska Communications' fiber ring near Fairbanks, and a combination of terrestrial and undersea fiber connects Kodiak Island to Homer and Seward on the Kenai Peninsula before completing a ring to Anchorage. In the Bush, off the road system and not connected by undersea cable, the options are limited to solely satellite transport or a combination of satellite transport and GCI's hybrid fiber/microwave TERRA network. The TERRA network is the only terrestrial provider of middle mile transport serving 72 communities in southwest and western Alaska. As has been well described by the Commission, satellite and microwave transport is inferior to transport over fiber cables in terms of latency, capacity and reliability.[27]

16. The ILEC and other carriers in the state have long complained that GCI restricts wholesale access to the TERRA network despite financing its construction and operation with federal grants, low interest loans and federal universal service support. For example, according to the Alaska Rural Coalition ("ARC"), four local exchange carriers requested a quote from UUI/GCI for use of the TERRA-SW. Only two received a quote. The others were told that TERRA-SW is "unregulated" and "has been presold for internal use by GCI,"[28] apparently in complete disregard of the commitments made in GCI's original BIP application. The ARC noted that the price provided by GCI far exceeded the cost of purchasing satellite backhaul, an already cost-prohibitive solution to providing broadband to remote Alaska."[29] Maintaining control of the TERRA network allows GCI to maintain a postalized month-to-

[27] *See e.g.* The Broadband Availability Gap, Federal Communications Commission Omnibus Broadband Initiative, Technical Paper No. 4, April 2010, pages 60, 75-76 and 115.
[28] See Alaska Rural Coalition Petition for Reconsideration, WC Docket No. 10-90, *et seq*., dated December, 2011, p. 12.
[29] *Id.*

month price of $9,500 per Mbps.[30] The per Mbps rate may be lowered to $240 for the hub port and $2,040 for each edge port if the customer commits to a 25-year contract for at least 400 Mbps – clearly contrary to the Commission's intent to restrict the use of long term contracts that limit competition.[31]

Examination of Data Obtained From the Commission's Rural Health Care ("RHC") and E-Rate Universal Service Support Programs Confirms that Competition Exists in Alaska Where There Are Multiple Middle Mile Providers

17. The Universal Service Administrative Company ("USAC") maintains data that shows the service address, service provider and amount of support provided or committed to be provided for support under the E-Rate and RHC programs.[32] By separating these data into groups representing Alaska Communications local serving areas, on and off-road service locations, locations served by TERRA, and by service provider, we can analyze the level of competition for areas served by single or multiple terrestrial middle mile providers. The use of support dollars is appropriate in the unique case of Alaska not only because of the inherent high cost of providing BDS in the state but also because E-Rate and RHC-funded projects make up a material portion of total BDS demand in Alaska.[33] The RHC and E-Rate programs do not provide funding only to high-cost areas. Instead, they are intended to provide discounts to qualifying community anchor institutions in low and high cost areas for services including BDS services and other services that require

[30] See https://www.gci.com/~/media/files/gci/regulatory/tariffs/gci_terra_posting_effective_07_29_15_final.pdf?la=en, According to GCI's rate posting the postalized price consists of a hub port charge of $1,000 and an edge port charge $8,500. Only one hub port may be ordered with any circuit/network.

[31] Order/FNPRM at ¶ 92.

[32] For the Rural Health Care Program see the Funding Tool at http://www.usac.org/rhc/telecommunications/tools/default.aspx For E-Rate please see Data Retrieval Tool at http://www.slforms.universalservice.org/DRT/Default.aspx

[33] *Connect America Fund et al.,* WC Docket No. 10-90 et al., Report and Order, 28 FCC Rcd 5301 (Wireline Comp. Bur. 2013) (CAM Platform Order); *Connect America Fund et al.,* WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (Wireline Comp. Bur. 2014) (CAM Inputs Order).

BDS.[34] That said, because the amount of support is based on a percentage of cost, the support amount will be higher in higher-cost areas, all else being equal.

18. The results of this analysis clearly show that for addresses on the road system that are more likely to have multiple terrestrial middle mile providers, RHC and E-Rate support is distributed fairly evenly across multiple service providers. In addresses off the road system, where it is much more likely that there is only a single provider, if any, of terrestrial middle mile, the level of competition for support dollars amongst service providers is significantly lower. These results hold whether the analysis is confined to just those areas where local service is provided by the single price cap carrier in Alaska (Alaska Communications) or across the entire state.

RHC and E-Rate 2015 Support Distribution: Entire State

Provider	Total RHC + Erate Voice Excl.	RHC + Erate Voice Excl. - On Road	RHC + Erate Voice Excl. - Off Road
Total	100.00%	100.00%	100.00%
GCI (incl. ILEC affiliates)	76.07%	26.15%	84.81%
Alaska Communications (Price Cap ILEC)	9.19%	42.86%	3.30%
Others	14.73%	31.00%	11.89%

The above table shows that the price cap carrier receives only 9% of the total support dollars across the state for providing BDS to schools, libraries and rural health care facilities. GCI, the largest provider in the state, receives 76% of the total RHC and E-Rate support, with other service providers receiving the remaining 15%. This would indicate limited competition and the likelihood that GCI, with 76% of the support dollars,

[34] *See* Universal Service Administrative Company Website at http://www.usac.org/default.aspx

has a large degree of market control. When the analysis focuses only on locations that are on the road system, a different picture emerges. No service provider enjoys more than 50% of the market share, with Alaska Communications, the price cap carrier, at 42%. By contrast, a lack of competition is clearly evident in areas off the road system. GCI provides services that allow it to capture almost 85% of the support received from the RHC and E-Rate programs in off-road communities in Alaska.

19. The difference in the level of competition between on and off-road locations holds when considering just those areas where the price cap carrier provides local service. Across all areas where Alaska Communications provides local service the competitive mix is fairly even with GCI receiving 46% of the support dollars, Alaska Communications receiving 32% and other service providers receiving 22%. When just considering on-road areas served by Alaska Communications, a relatively even distribution remains. However, the results change dramatically when we look at the off-road areas served by Alaska Communications ILECs. In those areas, GCI controls 68% of the support with the remainder evenly split between Alaska Communications and other carriers. These results are due to the presence of two providers of terrestrial middle mile in the on-road Alaska Communications locally served areas, and only one in the off-road areas.

RHC and E-Rate 2015 Support Distribution:
Alaska Communications Local Serving Areas

Provider	RHC/Erate voice excl. - Alaska Communications Local Svc.	RHC/Erate voice excl. - Alaska Communications Local Svc. - On Road	RHC/Erate voice excl. - Alaska Communications Local Svc. - Off Road
Total	100.00%	100.00%	100.00%
GCI (incl. ILEC affiliates)	46.40%	27.92%	68.06%
Alaska Communications	31.82%	45.33%	15.98%
Others	21.78%	26.75%	15.96%

20. This conclusion also holds true when examining the data for the areas served exclusively by GCI's TERRA middle mile network. Overall, in areas served by the TERRA network GCI receives almost 90% of the support dollars provided under the RHC and E-Rate programs. Alaska Communications receives nothing (even though TERRA serves four communities where Alaska Communications is the ILEC) with other providers receiving the remaining 10%.

21. While expressing these results in terms of percentages illustrates the differences in competitive levels in on-road versus off-road areas, showing them in dollars exposes the tremendous impact of the problem. In 2015 GCI received funding or commitments for funding of more than $126 million in RHC and E-rate support. In total the state received $166 million. Of the $126 received by GCI, $120 million came from areas off the road system where GCI was likely to be the only provider of terrestrial middle mile. On the road

system it was a different story. GCI received over $6 million, Alaska Communications received almost $10 million and other carriers received almost $8 million.

Provider	Total RHC + Erate Voice Excl.	RHC + Erate Voice Excl. - On Road	RHC + Erate Voice Excl. - Off Road
Total	$ 166,642,685.86	$ 24,822,572.99	$ 141,809,836.49
GCI (incl. ILEC affiliates)	$ 126,769,921.61	$ 6,490,988.65	$ 120,271,537.66
Alaska Communications	$ 15,320,513.09	$ 10,637,721.88	$ 4,682,791.21
Others	$ 24,552,250.53	$ 7,693,862.46	$ 16,855,508.07

22. GCI's dominance is even more pronounced in areas served by the TERRA network. In areas served by TERRA, GCI received $90 million of a $100 million total. Alaska Communications received no support in areas served by TERRA. This table illustrates two effects of GCI's middle mile monopoly in the areas served by the TERRA network. First, the monopoly allows GCI to gain 90% of the support flowing to these areas. Second, at a time when the Commission is attempting to control the size of the fund and create a more efficient distribution system, over 60% of the E-rate and RHC funding in Alaska is going to areas with less than 6% of the state's population.[35]

Provider	RHC/Erate voice excl. - TERRA	RHC/Erate voice excl. - TERRA - Alaska Communications Local Svc.
Total	$ 100,795,172	$ 476,465
GCI (incl. ILEC affiliates)	$ 90,279,601	$ 476,464
Alaska Communications	$ -	$ -
Others	$ 10,515,571	$ -

[35] Population estimate from Alaska Population Estimates by Borough, Census Area, City, and Census Designated Place (CDP), 2010 to 2014. TERRA Locations, TERRA Rate Posting.

23. In areas where Alaska Communications provides local service, the pattern continues. RHC and E-Rate support is relatively evenly distributed across on-road system areas and skewed significantly in GCI's favor in off-road areas. To further illustrate the point made in the preceding paragraph, the vast majority areas served locally by Alaska Communications are served by multiple middle mile facilities. These areas contain over 66% of the state's population yet only receive $26 million of a total of $166 million in E-rate and RHC support in the state, the majority of it ($18 million) flowing to ACS competitors. The remaining 84% of RHC and E-rate support flowing to Alaska is going to GCI with over $90 million of it destined for communities on the TERRA network.

Provider	RHC/Erate voice excl. - Alaska Communications Local Svc.	RHC/Erate voice excl. - Alaska Communications Local Svc. - On Road	RHC/Erate voice excl. - Alaska Communications Local Svc. - Off Road
Total	$ 26,568,240.40	$ 14,341,245.17	$ 12,221,504.78
GCI (incl. ILEC affiliates)	$ 12,328,068.41	$ 4,004,158.14	$ 8,318,419.82
Alaska Communications	$ 8,453,876.05	$ 6,501,042.97	$ 1,952,833.08
Others	$ 5,786,295.94	$ 3,836,044.06	$ 1,950,251.88

24. A review of additional data sources supports the conclusion that Alaska Communications is not the dominant provider of BDS or more complex services that rely on BDS in Alaska, either in its own local serving area or in any other part of the state. A review of the expenditures by the State of Alaska for the first six months of 2016 show that GCI is the dominant provider to the state government.[36] The total expenditures for service code

[36] Data for this analysis was obtained from the Payment Detail Report available at http://doa.alaska.gov/dof/reports/pmt_detail.html. Data showing the where the service was provided are not available for this report.

DATA/NETWORK shows GCI with $2.02 million of total expenditures by the state of $4.145 million. Alaska Communications provided $686,198 in data/network services to the state over the same period, with other providers accounting for the remaining $1.438 million in state expenditures. Once again, if any provider is dominant, it is GCI.

25. An analysis of federal BDS purchasing in Alaska tells the same story. General Service Administration ("GSA") expenditures from 2014 – 2016 show that Alaska Communications is not the dominant provider of BDS-type services in Alaska.[37] The GSA data indicate that Alaska Communications provides less than 15% of total GSA expenditures in Alaska while GCI provides almost 60%. This disparity holds for total expenditures, total on-road expenditures, and total expenditures where Alaska Communications provides local service.

GSA Wired Telecommunications Services for 2014 thru 2016[38]

Provider	Total GSA Contracts	GSA Contracts on Road	GSA Contracts off Road	GSA Contracts Alaska Communications Local Svc	GSA Contracts Alaska Communications Local Svc on Road
Total	$ 2,054,956	$ 1,775,450	$ 279,506	$ 1,645,239	$ 1,645,239
GCI (incl. ILEC affil.s)	$ 1,197,584	$ 1,172,501	$ 25,082	$ 1,085,619	$ 1,085,619
Alaska Comm.s	$ 275,491	$ 275,491	$ -	$ 254,023	$ 254,023
Others	$ 581,881	$ 327,458	$ 254,424	$ 305,597	$ 305,597

26. The only area where GCI is not the clear dominant provider to the GSA in the state is in off-road locations where other carriers are dominant. In off-road areas, carriers other than

[37] The GSA data is available at https://www.usaspending.gov/Pages/AdvancedSearch.aspx . NAICIS Code Selected: 517110, Product Codes Selected D302, D304 and D322.

[38] The data used in this analysis included categories that likely contained BLS services: IT & Telecommunications: Systems Development, IT & Telecommunications: Telecommunications & Transmission and IT & Telecommunications: Internet. It excluded categories such as IT & Telecommunications: Telephone and Communications, voice services and messaging.

GCI and Alaska Communications provide just over 90% of the BDS-like services to the GSA.[39]

27. Publicly available data from GCI's and Alaska Communications' 10-k Reports filed with the SEC, statements made to analysts and investors, USAC Rural Health Care and E-rate programs, the State of Alaska and the Federal General Services Administration make it clear that Alaska Communications is not the dominate provider of BDS services even in areas where it is the incumbent local service provider. These results also render suspect the data developed in the SADC. At the very least the Commission should not rely solely on the SADC data in its revised Competitive Market Test.

/s/
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August 9, 2016

[39] These other carriers include Bettles Telephone, Inc., Bristol Bay Telephone Cooperative Inc, Nushagak Electric & Telephone Cooperative Inc., and OTZ Telephone Cooperative Inc.

REDACTED – FOR PUBLIC INSPECTION

Exhibit B

Declaration of Beth R. Barnes, Senior Director, Mass Markets,
Alaska Communications (January 30, 2019)

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	**WC Docket No. 16-143**
	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	**WC Docket No. 05-25**
	)	

Declaration of Beth R. Barnes on Behalf of Alaska Communications

January 30, 2019

Statement of Qualifications

1. I have over 20 years of experience in the area of market research and analysis, and over 6 years of experience working with Alaska Communications. I currently serve as Senior Director, Mass Markets for Alaska Communications. Prior to my joining Alaska Communications, I held the position of Research Analyst with the State of Alaska. I hold a Bachelor of Science in Business Administration degree from Drake University and a Masters of Business Administration degree from the University of Wisconsin, Oshkosh.
2. In my role at Alaska Communications, I lead research and analysis of business data markets in Alaska. For the past several years, I have led the effort to estimate Alaska Market size by telecommunications product category. The categories included in the analysis include Internet/Data, Voice, Video, IT/Managed Services, Business Wholesale, and Other Wholesale. This exercise is conducted once per year. This exercise disaggregates data as reported in financial statements into the product categories and collects additional information from other external and internal sources. External sources include but are not limited to: Company SEC filings such as the 10k, USAC reports, annual reports (of non-public companies), and Gartner reports. The internal sources are

used to fill in gaps in information not provided by external sources. As an example, our sales teams have knowledge and expertise in the RFP's we have lost, to whom they went and the revenue generated for that company. The information is verified using industry spend data as reported in Gartner reports. Based upon my experience, collection criteria and validation efforts, I believe my conclusions to be reasonably accurate.

3. My estimate for the overall size of the Alaska Business Internet/Data services market is **[BEGIN HIGHLY CONFIDENTIAL]** ********** **[END HIGHLY CONFIDENTIAL]** This estimate includes both Business Data Services and "best effort" type services. As shown in the table below Alaska Communications has around 18 percent market share, GCI has around 65 percent market share and all other companies, such as MTA and Cordova Telephone Cooperative, have around 20 percent market share.

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[END HIGHLY CONFIDENTIAL]

4. My team recently updated prior work to estimate Alaska Communications' market share for business services. I specifically instructed my staff to exclude DSL and other best efforts Internet access services to more closely approximate the FCC's proposed definition of "Business Data Services." While this analysis may not exactly match the FCC's proposed definition of Business Data Services, it should be considered directionally reliable. Our estimate of BDS markets size in Alaska from 2013 to 2017 is as follows:

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[END HIGHLY CONFIDENTIAL]

5. My regional estimates of Alaska Communications' share of the business data services, including DS1 and DS3 services, are as follows:

   [BEGIN HIGHLY CONFIDENTIAL]

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   [END HIGHLY CONFIDENTIAL]

   With the exclusion of DS1 and DS3 services, Alaska Communications' market share is not significantly different. Because market share is based upon revenue, internal DS1 and DS3 circuits are excluded, as no revenue is recognized in these situations.

6. My estimates are based on:

   a. Overall market size used was based upon the analysis summarized in point 3. The business data/internet market size was then further refined to more closely reflect the FCC definition of BDS.

   b. Total business data/internet market size was separated into two buckets: 1) BDS market size and 2) Retail Internet market size. This breakout was determined by **[BEGIN HIGHLY CONFIDENTIAL]** ********** ********** ********** **[END HIGHLY CONFIDENTIAL]** We believe this methodology is representative in the market.

   c. The products included in the definition of BDS for the purposes of this analysis included Ethernet, MPLS, DS1 and DS3 products, which provide high capacity

connections with service level guarantees. The products excluded from the BDS category include business DSL, Long Haul, and business wholesale services.

d. Alaska Communications share is based upon internal reports of revenue by product. Then the total Alaska Communications revenue as defined as BDS revenue in point 6c was divided by total market size revenue as defined in point 6b.

e. The distribution of market size by market was determined by purchased data from GeoResults, a telecom database firm that estimates spend on data services by service location. The Alaska Communications market share estimate was derived by dividing actual company revenue by market by the estimated market size.

f. The data reported excludes both retail DSL and wholesale services in both market size and market share estimates.

7. It is my opinion that the data is sufficiently reliable to conclude that Alaska Communications has small to moderate shares of the business services market. Consequently, Alaska Communications does not dominate Alaska's markets for business data services.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

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